

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729

AFFIDAVIT

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Official Liquidator, say on oath:

1. I am an Official Liquidator and a Registered Liquidator and a Partner of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand and an associate member of the Australian Restructuring Insolvency and Turnaround Association (formerly the Insolvency Practitioners Association of Australia).
2. By Orders of this Honourable Court made on 21 November 2011 and 23 November 2011 (the **Orders**) I was appointed:
  - (a) pursuant to sections 1101B(1) and 601NF(2) of the *Corporations Act 2001* (Cth) (the **Act**) as the receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and the property of the Equititrust Priority Class Income Fund ARSN 089 079 729 (**EPCIF**) (collectively, the **Funds**); and
  - (b) pursuant to section 601NF(1) of the Act, to take responsibility for ensuring that the Funds are wound up in accordance with the Funds' constitutions.
3. Now produced and shown to me and marked "**DW-1**" is a true and correct copy of the Orders under which I was appointed and the Reasons for Judgment of Justice Applegarth.
4. I now make an application for the approval of my remuneration for acting as the receiver of the property of the EIF, and as the person responsible for ensuring that the EIF is wound up in accordance with its constitution for the period 1 May 2014 to 31 January 2015 (**the relevant period**).
5. This is my fifth application for approval of my remuneration for acting as the receiver of the property of the EIF and as the person responsible for ensuring the EIF is wound up in accordance with its constitution.
6. My first application was heard on 25 October 2012, and the Honourable Justice Mullins made an order fixing my remuneration for the period 22 November 2011 to 31 August 2012 in the amount of \$837,103.85 (inclusive of GST).

Signed: 

Taken by: 

Affidavit  
Filed on behalf of the Court Appointed Receiver  
Form 46 R.431

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSO:201204781

7. My second application was heard on 12 June 2013, and the Honourable Justice Douglas made an order fixing my remuneration for the period 1 September 2012 to 30 April 2013 in the amount of \$842,843.10 (inclusive of GST).
8. My third application was heard on 28 November 2013, and the Honourable Justice Dalton made an order fixing my remuneration for the period 1 May 2013 to 31 October 2013 in the amount of \$667,795.70 (inclusive of GST).
9. My fourth application was heard on 3 June 2014, and the Honourable Justice P Lyons made an order fixing my remuneration for the period 1 November 2013 to 30 April 2014 in the amount of \$503,435.35 (inclusive of GST).
10. Now produced and shown to me and marked collectively "DW-2" are true and correct copies of the Order of Justice Mullins dated 25 October 2012, the Order of Justice Douglas dated 12 June 2013, the Order of Justice Dalton dated 28 November 2013 and the Order of Justice P Lyons dated 3 June 2014.
11. In support of this application, I have set out in this affidavit the background to my appointment, as well as details of the tasks that I have undertaken (both in the course of the receivership and as the person responsible for ensuring that the EIF is wound up in accordance with its constitution for the relevant period), and an explanation as to why these said tasks were necessary.
12. Throughout this affidavit, where I refer to "my role", I am referring to my role as receiver of the property of the EIF and as the person appointed under section 601NF(1) of the Act as the person responsible for ensuring the EIF is wound up in accordance with its constitution.

#### **Background - Summary of the Responsible Entity and the Funds**


##### *Equititrust Limited*

13. Equititrust Limited ACN 061 383 944 (In Liquidation) (Receivers and Managers Appointed) (EL) is the Responsible Entity (RE) of the Funds.
14. EL holds an Australian Financial Services Licence (AFSL) to operate the EIF, EPCIF and EPF. On or about 9 December 2011, I became aware that the Australian Securities and Investments Commission (ASIC) suspended EL's AFSL on 7 December 2011. However, that suspension does not prevent EL from providing financial services that are reasonably necessary for, or incidental to, the winding up of the Funds, or are reasonably necessary for, or incidental to, the orderly winding up of the Equititrust Premium Fund.
15. The directors of EL are David Hickie, Mark McIvor and Ross James Honeyman.

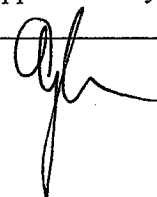
##### *The EIF*

16. The EIF is a first mortgage fund. There are approximately 1,600 investors in the EIF. As at the date of my appointment, the written down balance of the 29 loans that remained outstanding was \$127 million (that is, the written down value of the loans after provisions for loss). As at 31 January 2015, I have caused all loans that remain outstanding to be written down to a balance of nil.
17. The EIF had provided the majority of these 29 loans in relation to the acquisition and/or development of residential land in Queensland, New South Wales and South Australia, although two loans also had trading businesses associated with them.
18. Upon my appointment I became aware that only one loan for approximately \$300,000 was being

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serviced by the borrower, with the remainder of the loans having been in default for some time.

19. Now produced and shown to me and marked "DW-3" is a true and correct copy of the Consolidated Constitution for the EIF dated 3 June 2011 that I obtained following my appointment.
20. Upon my appointment, I became aware from the books and records of the EIF that the EIF had been a 'frozen fund' since October 2008, in that no redemptions of units by investors had been permitted since then; and that the EIF ceased making distribution payments to investors in February 2011.

#### *The EPCIF*

21. The EPCIF has five investors who invested a total amount of \$4.6 million. Its only asset is units it holds in the Equititrust Premium Fund. My investigations reveal that the anticipated current value of this asset is nil.
22. Now produced and shown to me and marked "DW-4" is a true and correct copy of the replacement constitution for the EPCIF dated 30 November 2010 and Deed Poll dated 13 December 2010 (which varies the constitution) that I obtained following my appointment.
23. Given the EPCIF has only five members and relatively minimal assets, the majority of my role has been as receiver of the property of the EIF and overseeing the winding up of the EIF. The application I have made and this supporting affidavit seeks approval for remuneration in respect of work performed in relation to the EIF only.

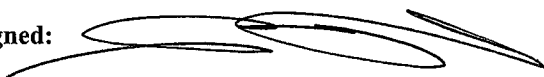
#### *The EPF*

24. EL is also the manager of the Equititrust Premium Fund (EPF), which is an unregistered managed investment scheme. The Bank of Scotland International appointed receivers and Managers to the EPF on 21 February 2012. On or about July 2012 the securities held by BOSI were assigned to MS Asia Debt Acquisition Ltd 1767181 (a company registered in Hong Kong) (MSA). On 27 August 2012, MSA appointed Michael Richard Peldan and Christopher Richard Cook (jointly and severally) as receivers and managers pursuant to the securities.
25. I have not been appointed in any capacity to the EPF or its property.

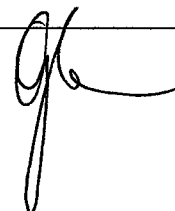
#### *Appointment of Voluntary Administrators and Receivers to EL*

26. On Wednesday, 15 February 2012, Blair Pleash, Richard Albarran and Glen Oldham of the firm Hall Chadwick (the administrators) were appointed administrators of EL.
27. On Thursday, 16 February 2012, the National Australia Bank Ltd (NAB) appointed William Colwell and Greg Moloney of the firm Ferrier Hodgson (the receivers) receivers and managers of EL. This appointment was in respect of EL only, not in respect of the EIF or the EPCIF.
28. After the appointment of the administrators and the receivers to EL, I sought and obtained an order from this Honourable Court (with the consent of the then administrators and the receivers) which (without derogating from my appointment or my powers pursuant to the Orders of Justice Applegarth of 21 November 2011 and 23 November 2011) authorised me to *inter alia*:
  - (a) take all steps necessary to ensure the realisation of property of the EIF held by EL as RE of the EIF, by exercising any legal right of EL as RE of the EIF in relation to the property of the EIF;

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- (b) bring, defend or maintain any proceedings on behalf of the EIF in the name of EL as is necessary for the winding up of the EIF in accordance with clause 9 of EIF's constitution; and
  - (c) take all steps necessary to effect the implementation of a NAB bank guarantee facility and the replacement of the existing bank guarantee facilities with the Commonwealth Bank.
29. Now produced and shown to me and marked "DW-5" is a true and correct copy of the Order of Justice Dalton dated 29 February 2012.
30. Subsequently, at the second meeting of creditors of EL, which was held on Friday 20 April 2012, the creditors of EL resolved that EL should be wound up and further resolved to appoint Blair Pleash, Richard Albarran and Glen Oldham (the liquidators) liquidators of EL. Glen Oldham ceased being a liquidator of EL on 17 July 2013. The remaining liquidators remain appointed to EL.
31. Now produced and shown to me and marked "DW-6" is a true and correct copy of an historical company search of EL, which shows the appointment of the various insolvency practitioners to EL.

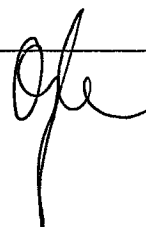
#### **Conduct of the winding up of the EIF**

32. By way of background, upon my appointment as receiver of the property of the EIF and as appointee under section 601NF(1) of the Act I reviewed the books and records of the EIF, met with the staff and senior management of EL, gathered information about the assets and liabilities of the EIF and took steps to ensure that EL put in place a strategy for the orderly winding up of the EIF.
33. In my role during the relevant period my staff and I undertook tasks which broadly fall within the following five categories:
- (a) Assets;
  - (b) Administration;
  - (c) Creditors;
  - (d) Trade On; and
  - (e) Investigation.
34. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with investors could be recorded under either the categories of Administration or Creditors. However, each task is only recorded once, and the time for carrying out each task is only recorded once.
35. As noted at paragraphs 5 to 9 above, I have already applied for and obtained orders fixing my remuneration for the periods 22 November 2011 to 31 August 2012, 1 September 2012 to 30 April 2013, 1 May 2013 to 31 October 2013 and 1 November 2013 to 30 April 2014. This affidavit deals with the tasks undertaken for the relevant period 1 May 2014 to 31 January 2015. However, to the extent I have considered it necessary to refer to matters prior to 1 May 2014 in order to give context to the present claim for remuneration, I have done so.

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### **Schedule of work performed during the period 1 May 2014 to 31 January 2015**

36. Particulars of the work my staff and I performed during the relevant period 1 May 2014 to 31 January 2015 are summarised in the Schedule, which is now produced and shown to me and marked "DW-7".
37. The Schedule records a description of each task undertaken under each of the above categories, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged.
38. I have reviewed the Schedule on a line-by-line basis. From my knowledge of the work carried out in relation to the winding up and my supervision of the tasks undertaken, I am satisfied that the time recorded in the Schedule for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
39. My staff and I record time on a daily basis. We enter our time in six minute units, and we enter the details of the time spent and the description of the tasks undertaken in an electronic system. My staff and I review these time entries on a periodic basis.

### **BDO's charge out rates**

40. Now produced and shown to me and marked "DW-8" is a true and correct copy of the following hourly charge out rates (which were applicable during the relevant period):
- (a) in respect of work undertaken by BDO Business Recovery & Insolvency (Qld) – hourly charge out rates for the 2013/2014 financial year and the 2014/2015 financial year;
  - (b) in respect of work undertaken by BDO Advisory (which was renamed as BDO Financial Management Consulting from 1 July 2014) – hourly charge out rates for the 2013/2014 and the 2014/2015 financial year;
  - (c) in respect of work undertaken by BDO Tax – hourly charge out rates for the 2014/2015 financial year. There was no work performed by BDO Tax during the period 1 May 2014 to 30 June 2014.
41. The Partners of BDO Business Recovery & Insolvency (Qld) are members of the Australian Restructuring Insolvency and Turnaround Association (ARITA), and we follow the ARITA Code of Professional Practice for Insolvency Practitioners.
42. Now produced and shown to me and marked "DW-9" is a true and correct copy of Parts 14, 15 and 16 of the third edition of the ARITA Code of Professional Practice (which came into effect on 1 January 2014) with respect to a practitioner's claim for remuneration.
43. I confirm that I have followed the ARITA Code of Professional Practice in this receivership. As to the hourly charge out rates for BDO Business Recovery & Insolvency (Qld), I can say from my own knowledge and experience that these rates are commensurate with what are charged by other insolvency practitioners and indeed are less than a number of our competitors' rates.

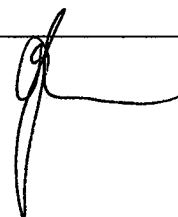
### **Utilisation of staff**

44. In order to ensure efficiency of cost, time and resources, where possible during the course of the receivership I have delegated tasks to employees of BDO in order to ensure compliance with statutory obligations and for accounting and reporting purposes; in particular, to ensure compliance with ASIC requirements where EL as RE for the EIF is mortgagee in possession/controller, and for insurance purposes.

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45. During the course of the receivership, in order to reduce costs, I terminated the employment of all EIF staff with the exception of one portfolio manager who I have retained as a consultant to provide assistance where required from time to time.
46. I have supervised all the work carried out under delegation, to the extent required by each task. Due to the complexity of some of the issues involved in the winding up process I have had to be directly involved in a number of the tasks.

### **Complexity of the receivership**

47. In order to further assist the Court, I set out in this affidavit an explanation as to why the tasks detailed in the Schedule were undertaken and why these tasks were necessary for the proper administration of the receivership of the EIF. Where I have considered it appropriate, I have also deposed to the background of the complexities and difficulties that have arisen during the course of the receivership of the EIF and in my role as appointee under section 601NF(1) of the Act.
48. For example, some of the main factors that have added to the complexity of the receivership (during the relevant period) include:
- (a) the fact there are 1,600 investors in the EIF, and the need to communicate with such a large number of investors;
  - (b) the number of legal disputes in relation to the properties the subject of securities held by EL as RE for the EIF;
  - (c) the complex inter-relationship between EL's affairs in its own right, EL's affairs as responsible entity for the EIF and EL's affairs as manager of the EPF;
  - (d) claims raised by the receivers of the EPF in relation to an alleged right to priority ahead of the EIF in respect of a number of security properties; and
  - (e) making an interim distribution to investors.

### **Assets**

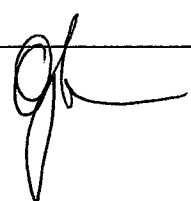
49. The EIF is a "first mortgage fund", meaning that it pooled the investors' funds and provided loans to third parties. As security for these loans, EL as RE for the EIF took (*inter alia*) mortgages over real property.
50. As stated above, all but one of these loans were in default at the time of my appointment. Accordingly, EL as RE for the EIF has been seeking to recover the moneys owing by selling the real properties pursuant to the terms of the mortgages held by EL as RE for the EIF, including taking possession of the properties with the intention of selling the properties as mortgagee exercising power of sale or appointing receivers to realise the property.
51. Prior to 1 May 2014, 25 out of the 29 properties that were the subject of these loans in default were sold. As described in more detail below, during the relevant period the sale of the Collingwood Park and Cornwallis properties settled, together with the sale of the Wirrina Cove head lease and remaining marina berths. Agreements were also reached for the assignment of a debt secured by a mortgage over a property in Wongawallan, Queensland; and, separately, with the owner of a property in Broadbeach Waters, Queensland that was subject to possession proceedings.
52. Further details of these properties and the asset realisation strategy undertaken with respect to them are set out below.

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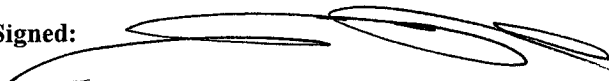
*Asset realisation strategy*

53. In my role, as part of the receivership I reviewed and documented the strategy being implemented for the recovery of each of EL's loans which were outstanding in the relevant period, which included:
- (a) when and how EL as RE for the EIF would dispose of the properties; and
  - (b) what was required to be done in relation to the properties, to obtain the best return for EIF investors. Such tasks included, for example:
    - (i) considering and negotiating offers to purchase the properties;
    - (ii) executing contracts of sale;
    - (iii) liaising with solicitors and agents leading up to settlement; and
    - (iv) receiving the proceeds of the sale of the properties.
54. Once a contract of sale has been signed and in order to progress and prepare to settlement, my staff and I generally undertake the following tasks:
- (a) liaising with any receivers appointed by EL and/or any other secured creditors to obtain release of charges for the particular security property (if any);
  - (b) reviewing settlement statements;
  - (c) considering and approving any requests for an extension to settlement; and
  - (d) executing land title documents including releases and transfers.
55. Further details as to the steps my staff and I undertook during the relevant period, and the reasons we undertook this work for individual properties, are set out further below.

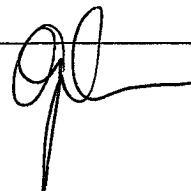
*Windsor Turf Farm, Cornwallis Road, Windsor, New South Wales*

56. This property is a turf farm, which includes eight individual allotments with a total area of approximately 100.32 hectares.
57. Prior to my appointment, EL as RE for the EIF had appointed a receiver to realise this security property, which is the subject of a mortgage held by EL as RE for the EIF.
58. By way of background, on 20 March 2014 I executed a contract of sale for the sale of the property (and the associated business) on behalf of EL as RE for the EIF as mortgagee.
59. During the relevant period I have continued to liaise with the appointed receiver regarding the settlement of this property, and my staff and I have undertaken tasks including:
- (a) liaising with the appointed receiver regarding the sale of the property, including reviewing the draft settlement statement and adjustments;
  - (b) considering the position with respect to caveats registered over the property and the effect (if any) on the sale of the property;
  - (c) liaising with my solicitors and the appointed receiver regarding the caveats registered over the property;

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- (d) liaising with the Land Titles Office regarding the caveats registered over the property;
  - (e) considering and providing instructions regarding the release of deposit monies;
  - (f) considering correspondence from the receiver regarding the sales commission payable;
  - (g) receiving the report of the appointed receiver regarding finalisation of the receivership, and reviewing receipts and payments, legal fees and outstanding receiver's fees;
  - (h) liaising with my solicitors regarding arrangements for settlement;
  - (i) attending to execution of land title forms for the purposes of settlement; and
  - (j) liaising with my solicitor regarding the transfer of water licences which formed part of the sale.
60. Settlement of this contract was effected on 22 May 2014. The appointed receiver is now finalising the receivership as well as a number of post-settlement obligations.

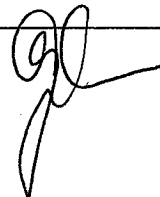
*325 Monaco Street, Broadbeach Waters, Queensland*

61. EL as RE for the EIF held a mortgage over this property.
62. This mortgage was provided as security to EL as RE for the EIF in relation to a loan provided to Bothers Pty Ltd (formerly Boothers Pty Ltd) as trustee for the Mackay Family Trust, pursuant to which there were still moneys outstanding to the EIF.
63. By way of background, I caused proceedings to be commenced in December 2012 for possession of the security property.
64. Since the commencement of the proceedings I have continued to progress the proceedings, and a mediation was held between the parties on 11 September 2013. The proceeding did not settle as a result of the mediation.
65. Following orders made in the proceedings on 14 March 2014 for the defendants' signature on the request for trial date to be dispensed with and, also, for further limited disclosure to be completed (as a result of an application made by the second defendant to the proceedings), I continued to progress the proceedings culminating with the matter being set down for a three day trial in the Supreme Court of Brisbane on 1 October 2014 to 3 October 2014.
66. Further, on or about 10 June 2014, as part of a global settlement agreed with the receivers and managers of the EPF (discussed further at paragraphs 142 to 145 below), I caused a separate loan provided by EL in its capacity as manager of the EPF to the same borrower, Bothers Pty Ltd (formerly Boothers Pty Ltd) to be assigned to EL as RE for the EIF. On or about 30 July 2014, I caused a demand to be made by EL as RE for the EIF on the security provider for repayment of the monies owing under the assigned loan.
67. In my role, in the relevant period, my staff and I have been required to undertake tasks, including:
- (a) liaising with my solicitors regarding the setting of the matter down for trial;
  - (b) reviewing and considering a rule 444 letter received from the defendants, and liaising with and providing instructions to my solicitors regarding a response;
  - (c) liaising with and providing instructions to my solicitors regarding the matters required in preparation for trial, including issuing of notices to admit documents and facts, and the

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issuing of subpoenas and third party notices;

- (d) attending with my solicitors to provide a witness statement in preparation for trial;
  - (e) obtaining and reviewing quotes for potential valuers of the property the subject of the proceedings;
  - (f) instructing and liaising with a valuer regarding the property;
  - (g) liaising with real estate agents regarding the potential value of the property the subject of the proceedings;
  - (h) attending at the property with the appointed valuer to inspect the condition of the property, in particular, in respect of water damage to the property;
  - (i) reviewing a valuation of the property;
  - (j) liaising with and providing instructions to my solicitors regarding the assignment of the separate loan from EL in its capacity as manager of the EPF;
  - (k) providing instructions to my solicitors regarding issuing a demand in respect of the assigned loan and reviewing and approving the demand;
  - (l) reviewing and considering offers to settle the proceedings;
  - (m) liaising with and providing instructions to my solicitors regarding an agreement to settle the proceedings;
  - (n) considering correspondence from the defendants regarding an extension of time under that agreement;
  - (o) liaising with and providing instructions to my solicitors regarding compliance by the defendants with the agreement to settle the proceedings; and
  - (p) liaising with the defendants in relation to settlement arrangements.
68. As a result of negotiations entered into with the defendants following the matter being set down for trial, I ultimately agreed to a settlement of the proceedings with the defendants. The defendants have now satisfied the terms of that agreed settlement.

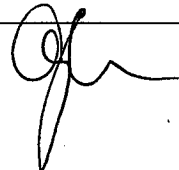
*Wirrina Cove, South Australia*

69. Wirrina Cove is located on the Fleurieu Peninsula in South Australia. It comprises a conference centre, restaurant, golf course, marina, caravan park, accommodation and both residential and undeveloped land.
70. The parcels of land at Wirrina Cove were owned or leased by ICA (South Australia) Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (Controllers Appointed) (ICA).
71. Sunset Cove Developments Pty Ltd (now deregistered) borrowed funds from EL as RE of the EIF and separately from Wirrina Corporation Pty Ltd ACN 131 742 151 (WC) to develop and construct on the land at Wirrina Cove. ICA guaranteed these loans and provided mortgages over the land at Wirrina Cove to EL as RE of the EIF and to WC as security for these loans. The loans to Sunset Cove Developments Pty Ltd were in default.
72. EL is the sole shareholder of WC, owning 100% of the shares in WC. EL holds the shares in WC

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in its capacity as RE for the EIF. Accordingly, the security WC held over the Wirrina Cove land was ultimately held for the benefit of the EIF.

73. The loans made by EL as RE of the EIF and by WC in respect of the land at Wirrina Cove represented a sizeable asset of the EIF as a whole. This section focuses on the steps my staff and I have undertaken, during the relevant period, to realise the remaining assets at Wirrina Cove for the benefit of the investors of the EIF.
74. During the relevant period, a reasonable amount of my time has been taken up dealing with the Wirrina Cove asset. This time has been necessary, in my view, to ensure that the maximum value is realised from this asset for the benefit of the investors of the EIF.
75. Specifically, in relation to the realisation of this asset, in the relevant period my staff and I have had to deal with tasks including:
- (a) upgrading the existing water and sewerage infrastructure (which formed part of a pre-existing agreement I had reached to transfer the water and sewerage operations (formerly provided by WC) to the Yankalilla Council), and liaising with the Yankalilla Council regarding the finalisation of the upgrade, in particular, the requirement to construct a water treatment plant shed;
  - (b) further considering the position in respect of an objection I lodged with the Valuer-General in respect of the assessment of the site value for the financial year 2013/2014 in respect of certain lots at Wirrina Cove under the *Valuation of Land Act 1971* (SA);
  - (c) considering the decision of the appointed review valuer following an application I made to review the decision of the Valuer-General, in relation to an objection I had made to the Valuer-General's assessment of the site value for the financial year 2012/2013 under the *Valuation of Land Act 1971* (SA); and
  - (d) progressing the settlement of the sale of the remaining property at Wirrina Cove including the marina head lease and the remaining marina berths, and negotiating with the potential purchaser and the Minister for the Department of Transport regarding the sale of the marina head lease.
76. In my view, it was necessary for my staff and I to undertake all of these tasks to maximise the amount that can be realised from this asset for the benefit of investors. I depose to details of each of these aspects in the following paragraphs.

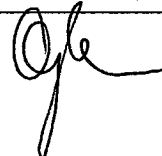
*Upgrade of the water and sewerage infrastructure*

77. Prior to 31 May 2013, WC was providing the water and sewerage services to the land owners at Wirrina Cove. As WC was, at that time, the mortgagee in possession of the land, I (together with WC) formed the view that, as a result of the outcome of the sales campaign for the land at Wirrina Cove, a third party operator would need to take over the provision of water and sewerage. This is because at the time the mortgagee was providing the water and sewerage services which was not practical in the long term given the mortgagee was not ordinarily in the business of providing these services. Accordingly, there needed to be certainty of ongoing supply in the long term following the sale of the properties.
78. After I engaged in extensive discussions and negotiations with the local Council and potential third party operators, the local Yankalilla Council voted to take over the water and sewerage services for the land at Wirrina Cove. Settlement of the transfer of the water and sewerage infrastructure operations and assets took place on 31 May 2013.
79. As part of the contract into which I entered with the Yankalilla Council for the transfer of the

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water and sewerage operations, it was agreed that I would cause certain works to be completed (post settlement) in order to upgrade the existing water and sewerage infrastructure.

80. In order to have these works completed, during the relevant period my staff and I were required to undertake tasks including:
- (a) corresponding with and liaising with Council regarding the status of the upgrade of the water and sewerage infrastructure and the costs of the upgrade;
  - (b) liaising with WC regarding the upgrade of the water and sewerage infrastructure;
  - (c) liaising with the Yankalilla Council and WC regarding the requirement for the construction of a water treatment plant shed;
  - (d) liaising with and providing instructions to my solicitors regarding the construction of the water treatment plant shed, and corresponding with the Yankalilla Council regarding it;
  - (e) reviewing the contract for the construction of the water treatment shed;
  - (f) liaising with the building contractor regarding the construction of the water treatment plant shed;
  - (g) reviewing and considering the agreement regarding the upgrade of the water and sewerage infrastructure, and the costs incurred;
  - (h) reviewing and considering the agreement for the completion of the upgrade of the water and sewerage infrastructure works, and the satisfaction of conditions in respect of same;
  - (i) reviewing and considering a variation to the agreement with the Yankalilla Council regarding the upgrade of water and sewerage infrastructure at Wirrina Cove;
  - (j) meeting with the Yankalilla Council in order to finalise the variation to the agreement for the upgrade of the water and sewerage infrastructure; and
  - (k) liaising with the Yankalilla Council in relation to a release of funds held on trust.

81. The above tasks were necessary in order to fulfil the obligations of the contract into which I had entered to transfer the water and sewerage operations to the Yankalilla Council, and in order to maximise the realisation of this asset for the benefit of the investors of the EIF.

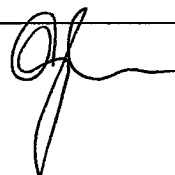
*Objection to the Valuer-General in respect of the assessment of land tax for the financial year 2013/2014*

82. On 10 January 2014, I, as the Court-appointed receiver of the EIF, caused an objection to be lodged with the Valuer-General regarding the assessment of the site value of certain allotments at Wirrina Cove for the year 2013/2014.
83. The Valuer-General has now made a decision on my objection. That decision resulted in a reduction in the taxable site values for the financial year 2013/14 of approximately \$1.6 million, which will result in an estimated land tax refund of approximately \$59,000.
84. During the relevant period, in respect of this objection, my staff and I were required to undertake tasks including:
- (a) liaising with a valuer in relation to the provision of a retrospective valuation report of the site value of the allotments at Wirrina Cove, to support the objection lodged with the Valuer-General;

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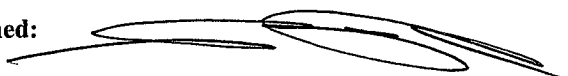


- (b) reviewing and considering the retrospective valuation report and liaising with the valuer regarding same;
  - (c) liaising with and providing instructions to my solicitors in respect of the retrospective valuation; and
  - (d) liaising with and providing instructions to my solicitors in respect of correspondence to the Valuer-General in relation to the objection.
85. The objection to the assessment of the site value for the year 2013/2014 was necessary to protect the interest of the investors of the EIF in respect of the outstanding land tax that was owed, and to maximise the realisation of this asset for the benefit of the investors of the EIF.

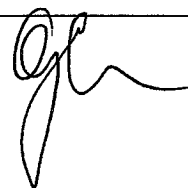
*Applying for a review of the assessment of the site value for the financial year 2012/2013*

86. On 21 December 2012, I, as the Court-appointed receiver of the EIF, caused an objection to be lodged with the Valuer-General regarding the assessment of the site value of certain allotments at Wirrina Cove for the year 2012/2013.
87. On or about 14 November 2013, I received separate decisions of the Valuer-General with respect to each allotment the subject of the objection.
88. I was not satisfied with the decisions and, as such, on 5 December 2013, I, as the court appointed receiver of the EIF, caused separate applications for a review of the site values to be lodged with the Valuer-General in accordance with the *Valuation of Land Act 1971 (SA)*.
89. During the relevant period, in respect of the applications for review, my staff and I were required to undertake tasks, including:
- (a) liaising with a valuer in relation to the provision of a retrospective valuation report of the site value of the allotments at Wirrina Cove, to support the application for a review I had lodged with the Valuer-General;
  - (b) reviewing and considering the retrospective valuation report, and liaising with the valuer regarding it;
  - (c) liaising with and providing instructions to my solicitors in respect of the retrospective valuation;
  - (d) reviewing and considering the decision of the review valuer (appointed pursuant to the *Valuation of Land Act 1971 (SA)*) in respect of the applications to review the site value of certain allotments at Wirrina Cove for the year 2012/2013;
  - (e) considering the merits of an appeal in respect of the decision of the review valuer; and
  - (f) liaising with and providing instructions to my solicitors in respect of correspondence to the Valuer-General in relation to the decision of the review valuer.
90. On or about 4 September 2014, the review valuer made a decision in respect of the applications for review lodged with the Valuer-General with respect to the 2012/2013 financial year. That resulted in a number of site values being reduced. However, as I was not satisfied with some of the decisions of the review valuer I engaged in correspondence with the Valuer-General in relation to the decisions of the review valuer.
91. Following these discussions and my subsequent investigations into the process for appealing the decision of the review valuer, I have determined that it is not commercial or in the interests of

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investors of the EIF to pursue an appeal of the decision.

92. In my view, the application for a review of the site value of the allotments for the year 2012/2013 and the subsequent discussions with the Valuer-General in relation to the decision of the review valuer were necessary to protect the interest of the investors of the EIF in respect of the outstanding land tax that was owed, and to maximise the realisation of this asset for the benefit of the investors of the EIF.

*Marketing campaign*

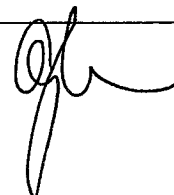
93. By way of background, WC and I engaged agents to sell the assets at Wirrina Cove on or about 6 September 2012. Both WC and EL as RE for the EIF undertook a joint expressions-of-interest campaign that closed on 19 December 2012.
94. The sales campaign was extensive, due to the sale being of:
- (a) a marina head lease;
  - (b) approximately 100 individual underleases for marina berths;
  - (c) six undeveloped lots;
  - (d) 75 residential lots;
  - (e) a caravan park;
  - (f) a golf course; and
  - (g) the resort and conference centre at Wirrina Cove.
95. The campaign resulted in approximately 500 enquiries, with 134 expressions of interest received.
96. I caused the acceptable expressions of interest received to be converted to contracts of sale, and negotiations with interested parties were also progressed.
97. In or about March 2013 I caused a new sales campaign to be undertaken with respect to the remaining properties at Wirrina Cove, which included the resort, conference centre and golf course, the remaining marina berths and the marina head lease. An auction campaign was subsequently undertaken with respect to the resort, conference centre and golf course. The auction was held on 21 June 2013, at which time the property was passed in. Following the auction, I continued negotiations with interested parties and, ultimately, a contract of sale was entered into on or about 26 July 2013, which contract settled on 12 December 2013.
98. On or about 10 October 2013 I caused a new auction campaign to be undertaken with respect to the remaining property at Wirrina Cove, which, at that time, comprised the marina head lease and the remaining marina berths. An auction for this remaining property was held on 7 November 2013.
99. A contract of sale was entered into at the auction for the purchase of the marina head lease. Subsequently, however, there were issues raised with the purchaser of the marina head lease. As a result, negotiations continued with interested parties and, ultimately, a contract of sale was entered into with another purchaser for the sale of the marina head lease on 9 April 2014.
100. As part of the sale of the marina head lease and the remaining marina berths, during the relevant period, my staff and I were required to undertake tasks, including:

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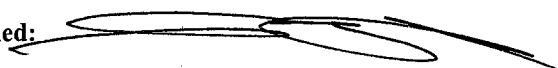
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- (a) liaising with my solicitors in relation to legal issues arising out of the sale of the marina head lease and the marina berths;
- (b) liaising with the purchaser under the marina head lease contract;
- (c) liaising with the South Australian Department of Transport regarding the assignment of the head lease and the contract of sale, generally;
- (d) liaising with WC regarding the sale and operation of the marina head lease for the purposes of the marina head lease sale contract;
- (e) liaising with my solicitors regarding the provision of information to the South Australian Department of Transport, for the purposes of obtaining the Minister's consent to the assignment of the marina head lease (which was a condition of the marina head lease sale contract);
- (f) liaising with the purchaser regarding information required in order to obtain Minister's consent to the assignment of the marina head lease;
- (g) reviewing a proposed deed of assignment for the purposes of completion of the marina head lease contract;
- (h) liaising with the appointed real estate agents regarding the sale of the marina head lease;
- (i) reviewing correspondence from the purchaser's solicitor regarding the marina head lease contract;
- (j) liaising with and providing instructions to my solicitors regarding requests for extensions to the conditions under the marina head lease sale contract;
- (k) reviewing correspondence from my solicitors and the solicitors for the South Australian Department of Transport regarding proposed amendments to the agreement for the transfer of the marina head lease (being a condition of the marina head lease sale contract);
- (l) liaising with the general manager at Wirrina Cove regarding the upcoming settlement of the marina head lease sale contract and the adjustments required for settlement;
- (m) reviewing correspondence from my solicitors regarding the agreement required to be signed by the purchaser and the South Australian Department of Transport in relation to the sale of the marina head lease;
- (n) reviewing documents required for the settlement of the marina head lease sale contract, including a notice of assignment, notice of attornment and covenants from the purchaser;
- (o) liaising with my solicitor in relation to the arrangements for settlement of the marina head lease sale contract;
- (p) considering requests for an extension to the settlement date of the marina head lease sale contract;
- (q) liaising with and providing instructions to my solicitors regarding the failure to settle on the settlement date under the marina head lease sale contract;
- (r) reviewing correspondence regarding the stamping of transfers required for the purposes of the settlement of the marina head lease sale contract;

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- (s) liaising with and meeting with the marina manager regarding the settlement of the marina head lease sale contract;
  - (t) reviewing letters to suppliers in preparation for the settlement of the marina head lease contract;
  - (u) reviewing invoices in respect of the commission of the appointed real estate agents for the purposes of settlement;
  - (v) liaising with the appointed real estate agents, WC and the purchaser of the marina head lease in relation to the demountables at Wirrina Cove;
  - (w) liaising with my solicitors and WC regarding the information required to finalise the settlement adjustments for the marina head lease contract;
  - (x) reviewing and collating information required to complete the settlement adjustments, including reviewing and reconciling the debtors ledger and cash flow of the marina operator; and
  - (y) reviewing draft settlement statements and stock take.
101. Settlement of the marina head lease sale contract was effected on 30 September 2014.
102. In my view, the above tasks were necessary to protect the interests of the investors of the EIF and to maximise the realisation of this asset for the benefit of the investors of the EIF.

*Other matters*

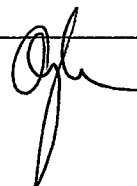
103. In addition to the above specific matters, in my role, my staff and I have during the relevant period also undertaken the following tasks in respect of the Wirrina Cove asset, to protect the asset and with a view to WC and to EL as RE for the EIF realising the asset, including:
- (a) considering the transfer of marina berths at Wirrina Cove;
  - (b) considering building requests regarding building in respect of properties at Wirrina Cove which are subject to a building encumbrance;
  - (c) liaising with the purchasers of properties at Wirrina Cove which are subject to a building encumbrance regarding satisfaction and compliance with the applicable architectural code;
  - (d) considering and reviewing outstanding debtors in respect of the marina berths at Wirrina Cove;
  - (e) liaising with WC regarding the audited marina outgoings;
  - (f) reviewing, considering and executing agreements to settle the dispute with marina berth owners regarding the outstanding outgoings;
  - (g) liaising with the solicitors for the marina berth owners regarding compliance with the agreement to settle the dispute regarding the outstanding marina outgoings;
  - (h) reviewing correspondence from the appointed real estate agents regarding the sale of the Wirrina Resort and Conference Centre and a query raised by the purchaser regarding land tax;

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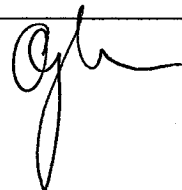


- (i) reviewing correspondence seeking a release of the building encumbrance over properties at Wirrina Cove;
  - (j) liaising with and providing instructions to my solicitors regarding the request to release the building encumbrance over properties at Wirrina Cove;
  - (k) reviewing summary of debtors and marina outgoings;
  - (l) reviewing correspondence regarding storm damage to the marina at Wirrina Cove;
  - (m) reviewing correspondence from an insurance broker regarding a claim for damage relating to the marina at Wirrina Cove;
  - (n) liaising with the insurer of the marina regarding the insurance claim and reviewing correspondence from the insurer in respect of the claim;
  - (o) liaising with and providing instructions to my solicitors regarding demountables located at Wirrina Cove;
  - (p) reviewing correspondence to the owners of the demountables located at Wirrina Cove;
  - (q) reviewing correspondence from residents at Wirrina Cove and the Yankalilla Council regarding the water and sewerage arrangements;
  - (r) liaising with my solicitors and RevenueSA regarding land tax;
  - (s) reviewing accounts and outgoings in relation to the marina and considering cash flow and trading position;
  - (t) liaising with WC regarding employee superannuation payments;
  - (u) liaising with WC in relation to various matters including storm damage, an insurance claim, marina outgoings and fire compliance issues; and
  - (v) reviewing and considering the position in relation to WC (and a related entity called Marina St Vincent Pty Ltd) income tax returns and BAS lodgements.
104. During the relevant period, the marina head lease contract settled on 30 September 2014. This contract was subject to the head lessor, being the Minister for Transport of Adelaide (SA), approving the transfer, which approval was granted on or about 1 September 2014.
105. With respect to the other lots at Wirrina Cove, as at the date of this affidavit:
- (a) all 75 residential lots have been sold;
  - (b) the sale of the resort, conference centre and golf course has settled; and
  - (c) there have also been additional settlements for the surrounding land at Wirrina Cove, including a caravan park and undeveloped land;
- totalling a gross realisation of approximately \$8,673,000.
106. With respect to the sale of the marina berths, all have settled (including the sale of the marina head lease) for a total gross realisation of approximately \$1.627 million.
107. With respect to the marina head lease, as noted above, the Minister for Transport of Adelaide

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approved the transfer and the contract for the sale of the marina head lease and remaining berths settled on 30 September 2014.

108. I consider that all of the above steps were necessary for the proper administration of this asset and to progress and maximise the realisation of this asset for the benefit of investors of the EIF.

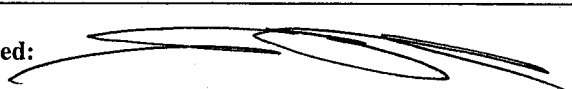
*Industry Central, Murwillumbah, NSW*

109. This property was provided as security for a loan provided by EL as RE for the EIF.
110. The security property is a large industrial sub division in northern New South Wales, comprising 18 lots. By way of background, 17 of these lots were sold in the period between 1 September 2012 and 30 April 2013. The final remaining lot was sold on 13 August 2013.
111. On 4 June 2013, I caused proceedings to be commenced against the valuer in respect of this asset.
112. For the purposes of these proceedings, in the relevant period my staff and I were required to undertake tasks, including:
- (a) providing ongoing instructions to my solicitors in respect of the claim; in particular, to obtain leave to renew the claim for a further year;
  - (b) reviewing the books and records of the EIF in order to locate documentation relevant to the claim and further information to provide to the valuer in order to finalise a retrospective valuation of the property;
  - (c) liaising with the expert valuer regarding the status and progress of the retrospective valuation report of the property; and
  - (d) considering the construction costs, the subject of the initial valuation the subject of the claim; and
  - (e) reviewing and critiquing the retrospective valuation of the property.
113. These proceedings are presently ongoing.

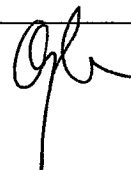
*335 – 351 Beenleigh-Redland Bay Road, Carbrook, Queensland*

114. This property was provided as security for a loan provided by EL as RE for the EIF.
115. This property is a partially prepared townhouse development site with a total area of approximately 2.092 hectares.
116. By way of background, I entered into a contract of sale for this property on 28 August 2012. Settlement of the sale of this property occurred on 15 August 2013.
117. In the relevant period my staff and I have continued with a claim against the valuer in respect of this asset.
118. For the purposes of these proceedings, in the relevant period my staff and I were required to undertake tasks, including:
- (a) liaising with my solicitors and providing ongoing instructions regarding the proceedings;
  - (b) reviewing correspondence regarding the status of preparation of the defence;

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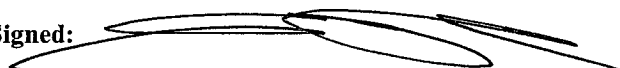


- (c) considering the defence filed in the proceedings;
- (d) reviewing and considering a list of documents for disclosure in the proceedings;
- (e) liaising with and providing instructions to my solicitors regarding the list of documents;
- (f) reviewing orders made regarding the ongoing conduct of the proceedings;
- (g) considering the request for further disclosure and liaising with my solicitors regarding same;
- (h) considering the engagement of an expert for the purposes of the proceedings;
- (i) reviewing the books and records of the EIF for the purposes of disclosure in the proceedings and briefing of the expert;
- (j) liaising with my solicitors regarding expert evidence;
- (k) reviewing an affidavit lodged by the solicitor for the defendants;
- (l) considering a request for particulars and liaising with and providing instructions to my solicitors in respect of same; and
- (m) reviewing, analysing and compiling documents for inclusion in a brief to an expert.

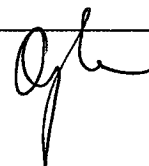
*Lots 1 & 65 – 67 “Eagle Street Estate”, Collingwood Park Drive, Collingwood Park, Queensland*

- 119. This property was provided as security for a loan provided by EL as RE for the EIF.
- 120. This is an Englobo residential development site with a total area of approximately 77 hectares. The site has development approval for high density housing (1,966 lots), a commercial component and over 30 hectares of open space.
- 121. By way of background, I caused a marketing campaign for this property to be conducted in September/October 2012.
- 122. Following the marketing of the property for sale, a contract of sale was executed on 10 April 2013. The contract was conditional upon the purchaser obtaining approval from the Ipswich City Council and the Australian Government Department of Sustainability, Water, Population and Communities by 31 July 2013 to clear vegetation on the property. The purchaser terminated the contract on 31 July 2013.
- 123. A new contract of sale was subsequently entered into on 13 August 2013 with the same purchaser on the same terms as the original contract, save that the timeframe for obtaining the approvals regarding the clearing of vegetation was extended to 15 October 2013, with settlement scheduled 30 days thereafter.
- 124. The contract allowed the purchaser to extend the settlement date of the contract (subject to certain conditions). The contract settled on 5 May 2014, within the relevant period.
- 125. In my role in the relevant period, my staff and I have, amongst other things:
  - (a) reviewed correspondence from the purchaser regarding works undertaken at the property;
  - (b) reviewed the settlement statement; and

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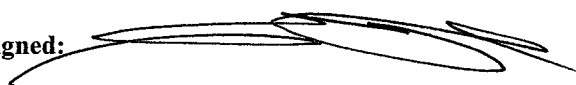


- (c) reviewed and executed transfer forms and releases of mortgages for the purposes of settlement.
126. In the relevant period my staff and I have also continued to progress a claim against the valuer in respect of this asset.
127. For the purposes of these proceedings, in the relevant period my staff and I were required to undertake tasks, including:
- (a) liaising with my solicitors and providing ongoing instructions regarding the proceedings;
  - (b) reviewing and considering the defence filed in the proceedings;
  - (c) reviewing the reply for filing in the proceedings and liaising with and providing instructions to my solicitors in respect of same;
  - (d) reviewing and considering a list of documents for disclosure in the proceedings;
  - (e) liaising with and providing instructions to my solicitors regarding the list of documents;
  - (f) reviewing orders made regarding the ongoing conduct of the proceedings;
  - (g) considering the engagement of an expert for the purposes of the proceedings;
  - (h) reviewing books and records of the EIF for the purposes of disclosure in the proceedings and briefing of an expert;
  - (i) liaising with my solicitors regarding expert evidence;
  - (j) considering a request for particulars and liaising with and providing instructions to my solicitors in respect of same;
  - (k) conducting further investigations in respect of issues raised in the proceedings; and
  - (l) reviewing, analysing and compiling documents for inclusion in the brief to expert.

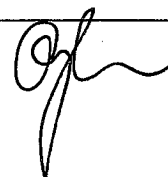
*"The Peaks", 0 Ormeau Road, Wongawallan Qld 4208*

128. This property comprises 7 freehold titles with a total area of approximately 92.7 hectares. The property stands as security for a loan that was subject to a Deed of Settlement, which EL entered into with the borrower prior to my appointment.
129. The borrower failed to comply with the terms of the Deed of Settlement.
130. The borrower marketed the property for sale by expressions of interest campaign, and the borrower kept me informed as to the conduct of the sales campaign.
131. Expressions of interest closed on 3 October 2013. Following the closure of the expressions of interest campaign I received an alternative proposal for repayment of the amount outstanding and I continued to liaise and correspond with the solicitors for the receivers of the EPF in relation to the matter (who also claimed an interest in the outstanding monies under the Deed of Settlement).
132. On or about 10 June 2014, as part of the global settlement reached with the receivers of the EPF in relation to a number of outstanding matters in which both the EIF and the EPF had an interest and/or were in dispute (as set out at paragraphs 142 to 145 below), I caused EL as RE for the EIF to assign its rights in respect of the amount owed to it and all of its interest in any securities

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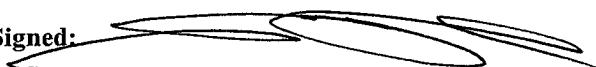
(including a mortgage over this asset) to EL in its capacity as manager for the EPF.

133. In respect of this asset, during the relevant period, my staff and I have been required to undertake tasks including:
- (a) considering the terms of the Deed of Settlement entered into prior to my appointment;
  - (b) liaising with and corresponding with the solicitors for the receivers of the EPF (who also claim an interest under the Deed of Settlement) regarding the assignment of the loan and securities;
  - (c) liaising with a consultant to the EIF regarding the arrangements for assigning the loan and securities to the EPF, given the consultant's direct knowledge of the loan and securities to be assigned;
  - (d) liaising with and provide instructions to my solicitors regarding the assignment of the loan and securities;
  - (e) reviewing and executing documentation for the assignment of the loan and securities;
  - (f) reviewing settlement statements;
  - (g) attending at settlement of assignment of the loan and securities; and
  - (h) reviewing correspondence from the liquidators of EL and the solicitors for another party claiming an interest in the Deed of Settlement, and considering and responding to same.
134. All of the tasks set out with respect to each of the above assets, were, in my view, necessary for the proper administration of the receivership in order to facilitate the global settlement with the EPF and maximise realisation and recover funds for the benefit of investors of the EIF.

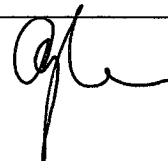
*Current court proceedings*

135. In addition to the real property securities, I, as receiver of the property of the EIF, and/or EL as RE for the EIF is (or has been) involved in a number of proceedings in various jurisdictions (both in Queensland and elsewhere) which relate to either the recovery of outstanding moneys to the EIF, or defend the security held by and/or the interests of the EIF.
136. There are currently 5 proceedings on foot, with other claims still being considered to determine whether commercial recoveries are achievable. Of these 5 proceedings currently on foot:
- (a) four relate to claims against valuers in respect of properties located at Collingwood Park, Queensland; Carbrook, Queensland; Industry Central, Murwillumbah, NSW and Earlando Road, Cape Gloucester (Airlie Beach), Queensland;
  - (b) the other is a proceeding under the provisions of the *Bankruptcy Act 1966* (Cth) regarding monies owed to the EIF.
137. In the course of the receivership during the relevant period, I have liaised with a consultant (who was formerly a staff member of EL) in relation to legal actions relating to loans made by the EIF and the underlying security for those loans, in order to progress these proceedings. That consultant had direct knowledge of certain matters that occurred before my appointment, which I required for use in the proceedings. I also provided instructions to solicitors where necessary in respect of each of these legal actions.
138. In addition to the work listed above my staff and I, in the relevant period, have also liaised with

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the solicitors instructed in the proceedings in respect of the following:

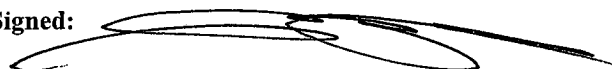
- (a) the status/progress of the proceedings;
  - (b) reviewing and considering amended pleadings;
  - (c) preparing, settling and swearing affidavits required in the proceedings;
  - (d) reviewing the books and records of the EIF for the purpose of disclosure in the proceedings, and identifying and collating the relevant books and records of the EIF in order to satisfy the disclosure obligations;
  - (e) considering the outcome of these proceedings; and
  - (f) any subsequent recovery action.
139. Given the nature of these proceedings, while they are likely to take some time to resolve, I expect that they will realise several million dollars for the benefit of investors of the EIF.
140. Accordingly, in my view such tasks are necessary to recover funds for the benefit of investors of the EIF.
141. In the relevant period, as mentioned above, I was also involved in a settlement with the receivers of the EPF. As part of the global settlement an agreement was reached to settle a number of proceedings, which involved a dispute between the EIF and the EPF. The background to this settlement and the work undertaken by me, and my staff, in respect of the settlement of the proceedings are set out at paragraphs 142 to 145 below.

*Settlement with the EPF*

142. On or about 10 June 2014, I (on behalf of the EIF) entered into agreements to contemporaneously assign and/or settle a number of matters with the receivers of the EPF, including the resolution of two legal proceedings.
143. As stated at paragraphs 66 and 132 above, this settlement included:
- (a) the assignment by EL (in its capacity as manager of the EPF) to EL (as RE for the EIF) of a loan to Bothers Pty Ltd (formerly Boothers Pty Ltd); and
  - (b) the assignment by EL (as RE for the EIF) to EL (in its capacity as manager of the EPF) of the EIF's rights in relation to the loan regarding "The Peaks," Wongawallan.
144. These transactions were part of a wider settlement of other matters, including the settlement of proceedings between the EIF and the EPF, and provided for recovery of funds for the EIF and the settlement of disputes between the EIF and the EPF in order to avoid expensive and potentially protracted litigation.
145. For the purposes of finalising these agreements, my staff and I were required to undertake tasks including:
- (a) considering and reviewing the draft settlement agreements;
  - (b) liaising with and providing instructions to my solicitors regarding the settlement of the outstanding matters as between the EIF and the EPF;
  - (c) reviewing EIF books and records for the purpose of compiling the documentation

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required for settlement of matters as between the EIF and the EPF;

- (d) reviewing and considering settlement statements;
- (e) reviewing and executing documentation required to effect the settlements; and
- (f) attending at settlement.

*Other matters*

146. In addition to the above specific matters, during the relevant period my staff and I have also undertaken the following tasks, which have been recorded under the category of "Assets":
- (a) considering and reviewing my obligations under section 420A of the *Corporations Act 2001* with respect to the sale of security property;
  - (b) liaising with my solicitors regarding an arrangement with the trustee in bankruptcy; considering a response from the trustee in bankruptcy; considering and reviewing deed of assignment; considering the response from the trustee in bankruptcy regarding a deed of assignment; liaising with and providing instructions to my solicitors regarding the terms of the deed (relating to the proceedings referred to at paragraph 136(b) above); reviewing correspondence regarding a report to creditors; reviewing a proof of debt; considering requests for payment under a funding agreement and the terms of the funding arrangement; approving same; reviewing and considering a deed of forbearance; reviewing correspondence to borrower regarding an assignment of securities;
  - (c) reviewing correspondence from my solicitors regarding funds held in Court; considering the status of proceedings; providing instructions to my solicitors regarding the proceedings;
  - (d) considering potential claims on behalf of the EIF; reviewing books and records of the EIF in relation to potential claims; liaising with the former solicitors of the EIF regarding documents required for potential claims; considering terms of an insurance policy; and
  - (e) reviewing correspondence regarding outstanding performance bonds; reviewing the details of outstanding performance bonds; liaising with Council regarding the return of outstanding bonds.
147. All of the tasks set out above, were, in my view, necessary for the proper administration of the receivership in order to maximise realisations and recover funds for the benefit of investors of the EIF.

**Administration**

148. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "administration".
149. In essence, the remuneration claimed under this category for the relevant period includes work my staff and I undertook that was necessary for the proper and efficient administration of the receivership, and to ensure proper accounts and records were maintained.
150. The main tasks my staff and I undertook in the relevant period are set out further below.

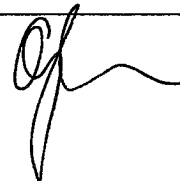
*Maintaining and updating records relevant to the receivership*

151. By way of background, upon my appointment I became aware that there was a loan spreadsheet

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available in respect of the EIF. However, this loan spreadsheet did not provide all the relevant details for each of the loans made by the EIF and, in particular, did not include a summary of the security held for each loan, the strategies for realising the particular loan and the relevant details for insurance purposes. This form of spreadsheet was not appropriate for me to use as receiver of the EIF.

152. In light of this, I caused my staff to create a master spreadsheet containing a summary of the loans, the security held and other relevant details for insurance purposes. During the relevant period my staff have continued to maintain and update the master spreadsheet to monitor the realisation of securities and compliance with ASIC requirements (where EL is mortgagee in possession). My staff and I also use the spreadsheet for insurance purposes.
153. As noted at paragraphs 16 and 17 above, there were 29 separate loans made by the EIF that remained outstanding at the date of my appointment and which had to be recovered. Accordingly, in addition to the above work, my staff created separate MYOB accounting records for each relevant loan from the data collated.
154. In the relevant period my staff have continued to maintain and input data to the MYOB records, in order to apply receipts and payments correctly to the respective loan accounts and for ASIC reporting purposes.
155. Further, in the relevant period, my staff and I have also continued to maintain and update the EIF's loan database and associated financial accounts in order to keep those financial records current, with a view to producing final accounts that are required to be audited on completion of the receivership.
156. In the relevant period, my staff and I have also been responsible for:
  - (a) reviewing and reconciling invoices;
  - (b) updating cashbook entries; and
  - (c) reconciling the loan/bank accounts.

*Applications for approval of remuneration*

157. As discussed at paragraph 9 above, I made an application for approval of my remuneration for the period 1 November 2014 to 30 April 2014, being my fourth application for approval of my remuneration.
158. For the purposes of my fourth application (which was filed in these proceedings on 15 May 2014), my staff and I were required to undertake tasks including reviewing and amending time narrations that were exhibited to the affidavit I swore in support of my fourth application, to ensure confidentiality of certain persons (including individual investors and prospective purchasers of assets) and to maintain legal professional privilege in respect of the work undertaken during the course of the receivership. I was also required to liaise with and provide instructions to my solicitors in respect of this application; in particular, in relation to the preparation of my supporting affidavit and in preparation for the hearing of the application.
159. By Order of Justice Lyons dated 3 June 2014, the costs of and incidental to my fourth application were ordered to be part of the winding up and the receivership of the EIF and are to be paid out of the assets of the EIF.
160. For the purposes of this present application, in the relevant period, my staff and I were required to review and amend the time narrations which now form exhibit "DW-7" to this affidavit to ensure confidentiality of certain persons (including individual investors and prospective purchasers of

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assets) and to maintain legal professional privilege in respect of the work undertaken by me (and my staff) in the relevant period.

#### *ASIC*

161. During the course of the receivership and as appointee pursuant to section 601NF(1), in the relevant period I have been required to consider and ensure adherence to ASIC requirements where EL as RE of the EIF is mortgagee in possession of security properties. This has included undertaking the following tasks:
- (a) reviewing loans where EL is in possession of security properties under its mortgages, to ensure adherence to ASIC requirements and that statutory lodgements with ASIC have been properly made;
  - (b) preparing the receipts and payment annexures for the statutory forms;
  - (c) preparing and reviewing statutory forms for lodgement with ASIC;
  - (d) lodging all statutory forms with ASIC on an on-going basis; and
  - (e) liaising with ASIC in respect of statutory lodgements.
162. As stated at paragraph 222 below, work undertaken in relation to preparing the receipts and payment annexures for the statutory forms and attendance to the lodgement of the statutory forms may be recorded in this category, or in trade on (discussed further below). However, time for carrying out each task is only recorded once.

#### *Payments*

163. A further significant matter to which my staff and I have continued to attend in the course of the administration of the receivership in the relevant period is requests for payments.
164. In my role, during the relevant period, my staff and I have been required to consider, approve and process payments in respect of a multiplicity of matters involved with the receivership, including:
- (a) consultancy fees;
  - (b) legal fees;
  - (c) real estate agents commission;
  - (d) insurance costs;
  - (e) council rates, land tax and other statutory obligations; and
  - (f) sundry costs.
165. These tasks are, in my view, necessary for the proper and orderly conduct of the receivership.

#### *Job management*

166. In the relevant period, my staff and I have conducted internal meetings and discussions in order to discuss:
- (a) the progression of the job;

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- (b) efficient job administration and management;
- (c) the appropriate response to investor communications;
- (d) recovery strategies; and
- (e) other general day to day management.

167. Again, I consider that such tasks are necessary for the proper administration of the receivership.

#### *Insurance*

168. During the course of the receivership, I have arranged to put in place open cover insurance through Blue Insolvency. This is necessary to cover property and other general insurance risks.
169. During the relevant period, my staff and I have provided information to Blue Insolvency (the provider of insurance) on an ongoing basis, as required for the continuation of appropriate insurance cover and/or the cancellation of same (where necessary).

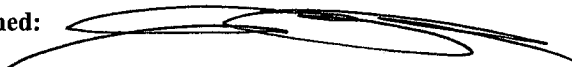
#### *Investor relations and communications*

170. I refer to paragraphs 206 to 210 below.
171. As stated therein, during the course of the receivership and in the relevant period my staff and I have attended to answering investor enquiries, and issuing investor communications to keep investors updated as to the receivership, including the process of asset realisation and the expected return to investors.
172. During the relevant period, my staff and I have also continued to maintain and update investor records with updated details as advised by investors; correspond with investors (and/or their solicitors or representatives) regarding the changes to their details, if required; scan and save such correspondence to the investor database; and maintain and update the investor database as necessary.
173. My staff and I also communicated and corresponded with numerous investors in relation to an interim distribution paid to investors in June 2014 (discussed at paragraphs 176 to 183 below), as well as in relation to an offer made by a third party to investors to purchase their unitholdings in the EIF (discussed at paragraphs 184 to 190 below).
174. For the purposes of the investor communications, including my reports and letters to the investors, my staff and I have been required to collate all relevant material for these reports including "work in progress" and remuneration reports, compile the reports and attend to the issue of these reports to each investor. I consider that these tasks are necessary to keep investors of the EIF properly informed as to the progress of the receivership and the winding up of the EIF.
175. As stated at paragraph 209 below, work undertaken in relation to communications with investors may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out each task is only recorded once.

#### *Interim Distribution*

176. During the relevant period my staff and I have been making the necessary arrangements to effect an interim distribution of 5 cents in the dollar per unit to investors.
177. The timing of the distribution was dependent on, amongst other things, the settlement of the sale of the Collingwood Park property (discussed at paragraphs 122 to 124 above) and the resolution

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of certain claims made by the liquidators of EL.

178. In estimating the funds that were available for distribution to investors, I was required to take into account the EIF's secured creditors, land tax, rates, receiver's fees and the unsecured creditors that remain outstanding, together with monies I required in order to pay future liabilities that may arise.
179. Unfortunately, the investor management software used by the EIF was not designed to process an interim distribution. Accordingly, my staff and I were required to liaise with the software's designers to develop a solution.
180. The distribution was ultimately made in June 2014 and was paid into investor's bank accounts or paid by cheque to the investor. Correspondence was also sent to each investor detailing the interim distribution.
181. In the relevant period, in order to effect the interim distribution to investors my staff and I were required to undertake tasks including:
- (a) liaising with investors regarding the timing and quantum of the interim distribution;
  - (b) considering distribution amounts and issues relating to a potential equalisation payment for certain investors, as well as the impact of the interim distribution on the units held by these investors;
  - (c) liaising with the software's designers to enable the distribution to take place;
  - (d) considering manual payments required to be made by cheque in relation to the interim distribution (plus related correspondence); and
  - (e) liaising with investors regarding the payment received.
182. I consider that these tasks were necessary for the progress of the receivership and the winding up of the EIF.
183. As noted at paragraph 215 below, work undertaken in relation to the interim distribution to investors may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out the task is only recorded once.

*Offer to investors*

184. In late April 2014, Babgenta Pty Ltd (**Babgenta**) made a request for a copy of the unit register for the EIF in order to make an offer to the unit holders to purchase their units.
185. I did not provide a copy of the register to Babgenta, because I concluded that Babgenta's purpose for obtaining the register was a prescribed purpose pursuant to s.173(3A)(b) of the *Corporations Act 2001* (Cth) and reg. 2C.1.03 of the *Corporations Regulations 2001* (Cth). In those circumstances, I was not required to provide a copy of the register to Babgenta, but Babgenta was nonetheless entitled to inspect a copy of the register.
186. The director of Babgenta attended at my offices on 6 May 2014 to inspect a copy of the register (under supervision). Following Babgenta's attendance at my offices my staff and I were contacted by a number of investors who advised they had received an offer from Babgenta to purchase their units in the EIF.
187. As a result of concerns I had about the circumstances surrounding the making of the offer by Babgenta I took legal advice in relation to the offer. I formed the view it was not appropriate for

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me to register a transfer of units unless I received a compliant transfer form and was satisfied (acting reasonably) that the investor wished the transfer to be registered. To the extent that there remained any uncertainty, I also considered making an application to Court for directions.

188. In the relevant period, as a result of the offer made by Babgenta my staff and I were required to undertake tasks including:
- (a) preparing for and meeting with Babgenta to inspect the unit register;
  - (b) reviewing the offer made by Babgenta to investors;
  - (c) liaising with my solicitors regarding the offer received;
  - (d) considering my obligation to effect a transfer of investors unitholdings;
  - (e) considering and reviewing correspondence to and from Babgenta in respect of the offer made;
  - (f) reviewing correspondence from investors regarding the offer made;
  - (g) reviewing transfer forms completed by certain investors;
  - (h) liaising with my solicitors regarding the transfer of unitholdings and the statutory requirements of the form of the transfer; and
  - (i) corresponding with investors regarding the form of the transfer, and seeking confirmation from the investors that they wished the transfer to proceed.
189. I consider that each of these tasks were necessary for the proper administration of the receivership.
190. As noted at paragraph 218 below, work undertaken in relation to the interim distribution to investors may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out the task is only recorded once.

#### *General*

191. In addition to the above specific matters, my staff and I also continued to conduct the following tasks in the relevant period:
- (a) considering and reviewing issues relating to claiming reduced GST input tax credits;
  - (b) liaising with the EIF's IT consultant;
  - (c) reviewing and attending to correspondence as required;
  - (d) maintaining an appropriate filing system and filing correspondence;
  - (e) reviewing and considering GST obligations and preparing, lodging and amending BAS returns for the months of March, April, May, June and July 2014;
  - (f) considering requests for copies of books and records and a copy of the unit register;
  - (g) considering costs orders obtained in favour of and against the EIF;
  - (h) archiving, reviewing, collating and retrieving (where appropriate) documents held by the

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EIF and third parties for the purposes of ongoing matters involving the EIF; and

- (i) considering a response to ASIC as to issues it had raised regarding the AFSL EL holds (see paragraph 14 above).

192. I consider that each of these tasks was necessary for the proper administration of the receivership.

#### **Creditors**

193. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "creditors". In the relevant period, I have:

- (a) considered, approved and corresponded with my solicitors regarding payment of legal fees;
- (b) processed payments for legal fees, disbursements, scheme expenses and distressed loan expenses;
- (c) reviewed and considered correspondence from my solicitors and Tucker SF Pty Ltd (a member of the EIF and one of the parties to the proceeding before Applegarth J, referred to at paragraphs 2 and 3 above) regarding the assessment of costs pursuant to the Orders;
- (d) provided instructions to my solicitors regarding the assessment of costs of certain members of the EIF, in relation to the hearings which took place on 21 November 2011 and 23 November 2011 (referred to at paragraphs 2 and 3 above), considered the preliminary assessment issued by the costs assessor, and considered the costs to be claimed for the assessment;
- (e) corresponded with the relevant council and/or consultants regarding bank guarantees held as bonds for uncompleted works;
- (f) liaised with the receivers of EL regarding an outstanding bank guarantee held with National Australia Bank Limited;
- (g) corresponded with receivers appointed to MM Holdings Pty Ltd, regarding repayment of a hardship distribution made to certain EIF investors;
- (h) reviewed and considered correspondence with respect to payments to investors who elected to receive annual distributions for the 2011 financial year; and
- (i) considered outstanding claims between EL and the EIF, corresponded with the liquidators of EL regarding the potential for resolution of those outstanding claims, reviewed correspondence regarding the proposed resolution of claims and provided instructions to my solicitors regarding same.

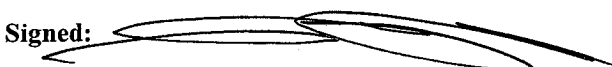
194. In addition to the above tasks, in the following paragraphs I depose to specific steps my staff and I undertook in the relevant period with respect to communicating with investors, and the reasons for such communications.

#### *Communications with EIF investors*

195. In my opinion, it was appropriate for me in the relevant period to continue to advise investors about what was currently occurring in relation to the operation and winding up of the EIF.

196. As stated above, during the course of the receivership and in the relevant period my staff and I have attended to answering investor enquiries, and issuing investor communications to keep

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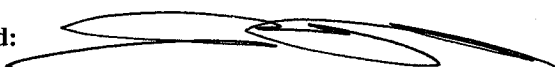
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investors updated as to the receivership including the process of asset realisation and the expected return to investors.

197. Between the date of my appointment and 1 May 2014, I had published eighteen reports to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF.
198. In my twelfth report dated 18 April 2013, I advised investors that I would now issue reports every two to three months in an effort to minimise costs, and on the basis that the majority of the remaining properties were subject to contract.
199. During the relevant period, I have continued to publish reports to investors.
200. On 21 May 2014, I published my nineteenth report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (Nineteenth Report). Now produced and shown to me and marked "DW-10" is a true and correct copy of the Nineteenth Report to investors. The matters stated in that report are, to my knowledge, true.
201. On 28 July 2014, I published my twentieth report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (Twentieth Report). Now produced and shown to me and marked "DW-11" is a true and correct copy of the Twentieth Report to investors. The matters stated in that report are, to my knowledge, true.
202. On 15 October 2014, I published my twenty-first report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (**Twenty-first Report**). Now produced and shown to me and marked "DW-12" is a true and correct copy of the Twenty-first Report to investors. The matters stated in that report are, to my knowledge, true.
203. On 30 January 2015, I published my twenty-second report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (**Twenty-second Report**). Now produced and shown to me and marked "DW-13" is a true and correct copy of the Twenty-second Report to investors. The matters stated in that report are, to my knowledge, true.
204. In each report, I also provided investors with a summary of:
- (a) the receipts and payments of the EIF;
  - (b) the realisation of the assets;
  - (c) the status of the legal proceedings;
  - (d) an updated estimate of the return to investors; and
  - (e) my remuneration.
205. During the relevant period my staff and I were required to undertake tasks for the purposes of reporting to investors, including:
- (a) drafting and reviewing the report to investors;
  - (b) preparing a schedule of receipts and payments in respect of the loan accounts;
  - (c) reconciling the cash at bank and the EIF account balances;
  - (d) preparing a table summarising my remuneration for inclusion in each report;

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- (e) updating the asset realisation summary;
  - (f) considering and calculating updated estimated return to investors; and
  - (g) preparing a breakdown of loan advances.
206. In addition to the reports to investors set out above, my staff and I have also been contacted by telephone by investors regarding:
- (a) the status of the receivership and the winding up of the EIF;
  - (b) the transfer of units and the documentation required to effect same; and
  - (c) queries arising from the reports to investors regarding the receivership.
207. During the relevant period my staff and I have also liaised with the beneficiaries and/or trustees of deceased investors' estates in respect of the investor's unitholding in the EIF. Where appropriate we have liaised with the beneficiaries, trustees and/or their solicitors to effect a transfer of the unitholding at the request of the investor's estate. My staff and I were required to undertake tasks including considering the request for a transfer of units, reviewing the documentation provided in support of such requests, and processing such transfers.
208. In the relevant period my staff and I were also required to correspond with investors and scan and save such correspondence to the investor database, as well as to maintain and update the investor database as necessary.
209. As noted at paragraph 175 above, work undertaken in relation to communications with investors may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out the task is only recorded once.
210. In addition to the above specific matters, during the relevant period my staff and I also had to liaise with investors in relation to an interim distribution to be made to investors, and also in relation to the offer received from Babgenta Pty Ltd to purchase the investors' units in the EIF. Each of these matters, and the tasks my staff and I were required to undertake in relation to each matter, are discussed further below.

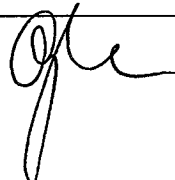
#### *Interim Distribution*

211. I refer to my discussion of the interim distribution at paragraphs 176 to 182 above.
212. As a result of notice being given in relation to the interim distribution my staff and I were required to address a number of queries from investors in relation to the interim distribution and address a number of matters in order to effect the interim distribution.
213. In particular, in the relevant period, my staff and I were required to undertake tasks including:
- (a) considering EIF books and records in relation to payments to investors in the financial year ending 30 June 2010 for the purposes of making the interim distribution;
  - (b) reviewing and considering further matters to be resolved for the purposes of making the interim distribution, including different classes of investors;
  - (c) reviewing and analysing of funds for making of the interim distribution and the funds I was required to maintain for the payment of contingent claims;
  - (d) reviewing, amending and issuing correspondence to investors regarding the interim

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distribution;

- (e) reviewing correspondence from investors with change of bank account details for the purposes of making the interim distribution; and
  - (f) liaising with the software provider regarding the distribution to investors by EFT.
214. I consider that these tasks were necessary for the progress of the receivership and the winding up of the EIF.
215. As noted at paragraph 183 above, work undertaken in relation to communications with investors may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out the task is only recorded once.

*Offer to investors*

216. I refer to my discussion of the offer made by Babgenta at paragraphs 184 to 189 above.
217. In the relevant period, as a result of the offer made by Babgenta I and my staff were required to undertake tasks including:
- (a) liaising with my solicitors regarding the offer received and in relation to correspondence from Babgenta;
  - (b) considering my obligation to effect a transfer of investors' unitholdings;
  - (c) reviewing acknowledgements from investors regarding their intention regarding the offer made; and
  - (d) corresponding with investors regarding transfer of their units.
218. As noted at paragraph 190 above, work undertaken in relation to communications with investors regarding the offer made by Babgenta may be recorded in more than one category, that is, under Creditors and/or Administration. However, time for carrying out the task is only recorded once.
219. I consider that all of the tasks set out above were necessary for the proper administration of the receivership in order to keep the investors properly informed as to the continuation of the winding up of the EIF, and to try and minimise the number of direct inquiries from investors requesting the same information.

**Trade On**

220. The remuneration claimed in this application includes work my staff and I undertook in respect of the administration of the receivership and in my role as overseeing the winding up of the EIF, which I would describe as "trade-on".
221. Generally, this "trade-on" work relates to work for the relevant period which is incidental to the receivership and the specific matters discussed within this affidavit, and includes:
- (a) considering and approving expenses of the EIF;
  - (b) preparing receipts and payments to accompany the lodgement of ASIC statutory forms;
  - (c) reviewing cashflow forecasts;
  - (d) the preparation and lodgement of Business Activity Statements for the months of March

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2014, April 2014, May 2014, June 2014 and July 2014, including reviewing source documents;

- (e) reviewing and considering MYOB entries and cashbook entries;
  - (f) reviewing insurance cover and invoices in respect of same, and authorising payments;
  - (g) reconciling MYOB accounts;
  - (h) updating the receipts and payments and reconciling same;
  - (i) updating the EIF records including records maintained on the investor database with details of loan transactions and receipts and payments;
  - (j) reviewing and considering accounts payable;
  - (k) reviewing and approving payment of legal expenses and consultants' expenses;
  - (l) considering outstanding statutory lodgements, and liaising with the directors of WC (a wholly-owned subsidiary of EL in its capacity as RE of the EIF, as stated at paragraphs 71 to 72 above) regarding completion and submission of outstanding statutory lodgements;
  - (m) reviewing WC's bank account general ledger; and
  - (n) considering correspondence from ASIC regarding EL's AFSL and providing instructions to my solicitors regarding a response to ASIC.
222. Work undertaken in relation to "trade on" may be recorded in more than one category. For instance, work involved in preparing and lodging Business Activity Statements may be recorded in this category, or in Administration (as set out in paragraph 191(e) above); and work undertaken in relation to preparing the receipts and payment annexures for the statutory forms and attendance to the lodgement of the statutory forms may be recorded in this category, or in Administration (as set out in paragraph 162 above). However, the work undertaken is only recorded once.
223. All of the tasks set out above, were, in my view, necessary for the proper administration of the receivership in order to maximise realisations and recover funds for the benefit of investors of the EIF.

### Investigation

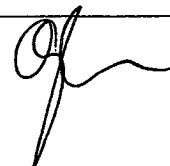
224. During the course of the receivership, and in my role, my staff and I have undertaken various tasks that can be described as falling within the category "investigation".
225. In essence, the remuneration claimed in this application under this category for the relevant period includes the following work:
- (a) investigating matters relating to the offer made by Babgenta to investors to purchase their units in the EIF;
  - (b) considering the terms of the insurance policy held by EL and notifications made in respect of potential claims under same;
  - (c) reviewing and collating documentation for the purposes of the overall settlement with the EPF;

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**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

**CERTIFICATE OF EXHIBIT**

**INDEX TO EXHIBITS**

**VOLUME 1 OF 2**

Exhibits "**DW-1**" to "**DW-6**" to the affidavit of **DAVID WHYTE** sworn at Brisbane on this 19<sup>th</sup> day of February 2015.

| <b>Exhibit</b> | <b>Description</b>   | <b>Page No.</b> |
|----------------|--|-----------------|
| <b>DW-1</b>    | Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 and Reasons for Judgment   | 1 – 32          |
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| <b>DW-5</b>    | Order of Justice Dalton dated 29 February 2012   | 134 – 135       |
| <b>DW-6</b>    | Historical company search of Equititrust Limited dated 19 February 2015  | 136 – 159       |

.....  
Deponent

.....  
Solicitor

Jacqueline Suzanne Ogden  
Solicitor

Certificate of Exhibit  
Filed on behalf of the Court Appointed Receiver  
Form 47 R.435

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSO:201204781

SUPREME COURT  
OF QUEENSLAND

1 NOV 2011

FILED  
BRISBANE

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/2011

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

Before: Justice Applegarth

Date: 21 November 2011

Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the "Act"):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 ("EIF");
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ("EPCIF").
2. David Whyte ("Mr Whyte") be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-

ORDER:

TUCKER & COWEN

Solicitors

Level 15

15 Adelaide Street

Brisbane, Qld, 4000.

Tele: (07) 300 300 00

Fax: (07) 300 300 33

COPY

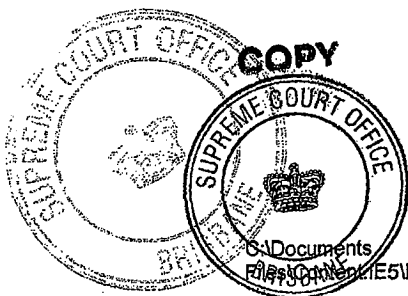
Filed on behalf of the Applicants

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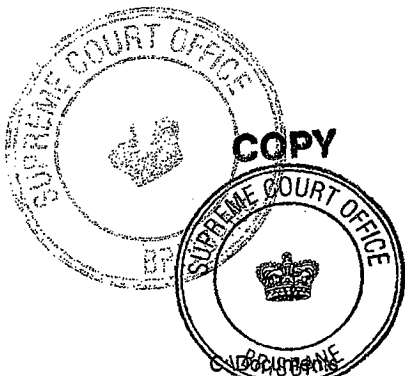
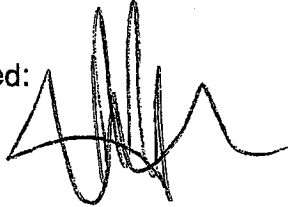
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- (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;
  - (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.



8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.

Signed:



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SUPREME COURT  
OF QUEENSLAND

23 NOV 2011

SUPREME COURT OF QUEENSLAND

FILED  
BRISBANE

REGISTRY: Brisbane  
NUMBER: BS 10478 of 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST  
PRIORITY CLASS INCOME FUND ARSN 089 079 729

ORDER

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21 November 2011

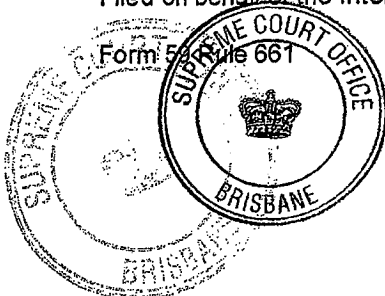
THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (*the Act*) David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
2. Pursuant to s.601NF(2) of the Act David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).

ORDER  
Filed on behalf of the Intervener

Australian Securities & Investments Commission  
Hugh Copley, Litigation Counsel

Level 20, 240 Queen Street, Brisbane Qld 4000  
Tel: (07) 3867 4700  
Fax: (07) 3867 4725  
Ref: K Rodgers (11-40025)

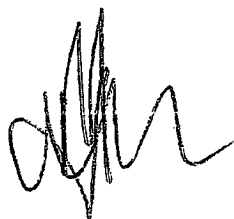


3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.

**COPY**



8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. That the parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.



# SUPREME COURT OF QUEENSLAND

CITATION: *Re Equititrust Ltd* [2011] QSC 353

PARTIES: **EQUITITRUST LTD**  
**ACN 061 383 944**  
(applicant)  
v  
**THE MEMBERS OF THE EQUITITRUST INCOME  
FUND AND THE EQUITITRUST PRIORITY CLASS  
INCOME FUND**  
(respondents)

FILE NO: BS 10478 of 2011

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING  
COURT: Supreme Court at Brisbane

DELIVERED ON: 23 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 21 and 23 November 2011

JUDGE: Applegarth J

ORDERS: **Orders for two registered schemes to be wound up pursuant to s 601ND of the *Corporations Act* 2001 (Cth), for the appointment of a person to take responsibility for ensuring that each registered scheme is wound up and for the same person to be appointed as a receiver of the property of each scheme.**

CATCHWORDS: CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – where company applied to Court for the winding up of two registered schemes of which it was the responsible entity and for the appointment of a temporary responsible entity – where circumstances of urgency exist due to impending lapse of insurance for officers of company – where directors indicated that they would resign upon lapse of insurance – where the administration of the schemes had broken down and the schemes’ purposes could no longer be accomplished – where the company was in breach of the *Corporations Act* 2001 (Cth) and of conditions of its financial services licence – whether the Court had jurisdiction to appoint a temporary responsible entity – whether the Court should order the winding up of the schemes – whether the Court should appoint a receiver to the property of each scheme

*Corporations Act 2001 (Cth)* s 601FA, s 601FN, s 601FP, 601ND, s 601NF, s 1101B

*Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 cited  
*Capelli v Shepard* (2010) 264 ALR 167; [2010] VSCA 2 cited

*Re Crust 'N' Crumb Bakers (Wholesale) Pty Ltd* [1992] 2 Qd R 76 cited

*Joye v Beach Petroleum N.L.* (1996) 67 FCR 275 cited

*Mier v FN Management Pty Ltd* [2006] 1 Qd R 339; [2005] QCA 408 discussed

*Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 cited

*Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346; [2009] NSWSC 1068 discussed

*Re Stacks Managed Investments Ltd* (2005) 219 ALR 532; [2005] NSWSC 753 discussed

*Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 cited

*Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34; [2000] VSC 300 cited

COUNSEL:

P L O'Shea SC and J W Peden for the applicant  
 A S Martin SC and G M Drew for certain members  
 D R W Tucker (solicitor) for a member, Tucker SF Pty Ltd  
 T P Sullivan SC and S R R Cooper for the Australian Securities and Investments Commission intervening  
 D D Keane instructed directly by Lion Advantage Ltd, an applicant for appointment as a temporary responsible entity (21 November 2011)  
 J W Peden for the applicant and Mr Mark McIvor (23 November 2011)

SOLICITORS:

Nyst Lawyers for the applicant  
 Piper Alderman for certain members  
 Tucker & Cowen for Tucker SF Pty Ltd  
 Australian Securities and Investments Commission for the intervener  
 Nyst Lawyers for Mr Mark McIvor (23 November 2011)

- [1] On Monday, 21 November 2011 I made certain orders following a hearing which was held on short notice and in circumstances of urgency. These are my reasons for making those orders. The circumstances of urgency included the fact that two insurance policies covering officers of Equititrust Ltd (the company) were due to expire at 3.00 pm that day. They were unlikely to be renewed and alternative insurance could not be sourced. In those circumstances, the recently-appointed directors of the company were not prepared to remain on the board and proposed to resign shortly before 3.00 pm.

- [2] By an originating application filed on 15 November 2011 the company sought the following two orders:

- “1. The Equititrust Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001;
2. The Equititrust Priority Class Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001.”

It also sought an order pursuant to s 601FN of the *Corporations Act* (Cth) 2001 (“the Act”) that:

“Equititrust Limited be replaced as the Responsible Entity of the Equititrust Income Fund and the Equititrust Priority Class Income Fund (**‘Funds’**) by a temporary Responsible Entity, with that entity to wind-up the Funds and take steps to call a meeting of members to ratify its appointment”.

The company also sought an order pursuant to s 601NF that a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed to take responsibility for ensuring that the funds are wound up in accordance with their constitutions and that appropriate directions be made to effect that winding up.

- [3] Upon the hearing of the application the company initially sought only an order pursuant to s 601FN of the Act that it be replaced as the responsible entity of the two funds. However, it submitted that if I did not appoint a temporary responsible entity to replace it, I should order that the funds be wound up.
- [4] The Australian Securities and Investments Commission (ASIC) intervened in the proceeding and made an oral application for the appointment of a receiver to the funds pursuant to s 1101B of the Act.

### **The application for the appointment of a temporary responsible entity**

- [5] There was a jurisdictional impediment to the making of an order under s 601FN for the appointment of a temporary responsible entity. That section entitles ASIC or a member of a registered scheme to apply to the Court for the appointment of a temporary responsible entity of a scheme under s 601FP if the scheme “does not have a responsible entity that meets the requirements of s 601FA”. Section 601FA requires the responsible entity of a registered scheme to be a public company that holds an Australian financial services licence authorising it to operate a managed investment scheme. At the time of the company’s application and at the time of the hearing it met both of these requirements. The fact that it was in breach of the terms of its financial services licence and faced the prospect of having that licence terminated or suspended did not alter the fact that it still held its licence.
- [6] This jurisdictional impediment was, in part, the result of the company seeking from ASIC and obtaining an adjournment until 22 November 2011 of a hearing to show cause why its licence should not be terminated.
- [7] Counsel for ASIC helpfully drew my attention to Regulation 5C.2.02 of the *Corporations Regulations* 2001 (Cth), although the company did not make any

application under that regulation. For the reasons given by ASIC, it is questionable whether that regulation provides a source of power for the Court to appoint a temporary responsible entity other than in the circumstances provided for in s 601FL or s 601FN.

- [8] In the result, the Court's power to appoint a temporary responsible entity upon an application under s 601FN was not invoked.
- [9] This makes it unnecessary to address the question of whether the appointment of a temporary responsible entity was in the interests of the members, and a contentious issue as to whether the replacement of the company by such an entity would result in a reconversion of subordinated units held by the company in its own right, and a decrease in the value of units held by other members.

### **The application under s 601ND to wind up the funds**

- [10] The company submitted that if I did not appoint a temporary responsible entity to replace it as the responsible entity for each fund, then I should make the orders sought in paragraphs 1 and 2 of its originating application for each of the funds to be wound up pursuant to s 601ND. ASIC supported this application. So did a member of the Equititrust Income Fund, Tucker SF Pty Ltd. The only opposition to making orders under s 601ND came from seven members for whom Mr Martin SC and Mr Drew of counsel appeared. The basis for that opposition was to enable members to call a meeting and to vote upon a proposal to wind up the Income Fund pursuant to s 601NB of the Act.
- [11] It is necessary to outline certain factual matters by way of background to explain why I reached the conclusion that it was just and equitable to make an order directing the responsible entity to wind up each fund, and why I considered that such an order should be made promptly rather than delayed for some uncertain period to allow the members to vote on a resolution to wind up the Income Fund.
- [12] The company is the responsible entity of three managed schemes, two of which are registered. The third, being the Equititrust Premium Fund ("EPF"), is not registered and is not required to be registered under the Act. The two registered managed investment schemes are known as the Equititrust Income Fund ("EIF") and the Equititrust Priority Class Income Fund ("EPCIF"). The EIF has some 1,400 members and net assets in excess of \$100,000,000. The EPCIF has only five members, all apparently associated with the company's sole shareholder, Mr McIvor. EPCIF holds 13,636,478 units in the EPF.
- [13] As its name suggests, the EIF was intended to be an "income fund" which provided monthly interest payments on most investments and the redemption of capital. Where a member invests for a period of 12 months the entitlement to redemption arises on the anniversary of the allotment of units after a request is made to redeem. The fund no longer achieves its purposes. The fund has been frozen since October 2008 in that no redemptions of units have been permitted since then. Since April 2011 the fund has ceased paying interest to members.
- [14] The company was beset by discord between directors and the company's sole shareholder, Mr McIvor, during 2011. It is unnecessary to describe fully the nature of the discord. An application was brought by the superannuation fund of a former director, Mr Tucker, seeking an order for the winding up of the EIF. The

application was adjourned on the basis of certain undertakings, given by Mr McIvor to the Court, not to seek to appoint any new director or remove any existing director from the board of the company without giving notice to the existing board and to ASIC, and seeking leave of the Court. These undertakings were given on 27 October 2011 in circumstances in which the company had been placed in the hands of a newly appointed board of directors. The newly appointed board comprised Mr Paul Vincent, Mr Jeff McDermid, Mr Troy Bingham and Mr Warwick Powell. Mr Vincent is a Fellow of the Institute of Chartered Accountants, and has 30 years experience as a Chartered Accountant. He and his fellow directors familiarised themselves with the operations of the company and considered how the funds might best be wound up. The new board considered the best realisation strategies.

[15] On 12 October 2011 a differently constituted board had unanimously resolved:

- (a) that Equititrust Limited as the responsible entity of the Equititrust Income Fund considers that the purpose of the Equititrust Income Fund cannot be accomplished (within the meaning of s 601NC(1) of the *Corporations Act*).
- (b) that Equititrust Limited as responsible entity of the Equititrust Income Fund take steps to wind up the Equititrust Income Fund within the meaning of s 601NC(1) and in accordance with its constitution.
- (c) that the chief executive officer prepare notices to give to members of the scheme and to ASIC in accordance with s 601NC(2) of the *Corporations Act*.

A similar resolution was passed the same day in respect of the EPCIF, namely that its purpose cannot be accomplished and that it should be wound up.

[16] The new board would have preferred to continue with the process of winding up that had been instigated, being a process provided for under s 601NC of the Act. However, the expiry and non-renewal of insurance policies on 21 November 2011 prompted them to have the company apply for winding up orders pursuant to s 601ND.

[17] Mr Vincent, in an affidavit sworn on 18 November 2011, assessed the approximate financial position of the company as at 31 October 2011 as follows:

- “a. ETL [Equititrust Ltd] has assets in its own right worth approximately \$26,498,000;
- b. ETL has liabilities in its own right in the approximate sum of \$26,470,000;
- c. ETL has assets that it holds for the EIF in the approximate sum of \$120 million;
- d. ETL has liabilities in its capacity as responsible entity for the EIF in the approximate sum of \$9 million;
- e. ETL has therefore net assets in the EIF in the approximate sum of \$111 million;

- f. ETL has liabilities in its capacity as Responsible Entity for EPF in the approximate sum of \$12.5 million;
- g. ETL has assets that it holds for the EPF of approximately \$13 million;
- h. ETL has therefore net assets in the EPF in the approximate sum of \$0.5 million.”

[18] The company has borrowings on its own behalf and also on behalf of the funds. The secured lenders include the Commonwealth Bank, the National Australia Bank and the Bank of Scotland International. The borrowings are secured by various real property mortgages and charges over assets of the company in its own right and also over assets of the funds. The total borrowings are approximately \$17 million, owed by EIF as to \$9 million and by EPF (the unregulated fund) as to \$8 million. The company's assets and liabilities are more fully summarised in Mr Vincent's affidavit sworn on 18 November 2011. That affidavit was supplemented by an affidavit sworn on 21 November 2011 which corrected paragraph 6 of the earlier affidavit by stating that the company in its capacity as responsible entity for the EPCIF holds 13,636,478 units in the EPF.

[19] Importantly for present purposes, according to Mr Vincent's assessment the EIF has net assets of about \$111 million.

[20] Based upon his work as a director since his appointment, Mr Vincent was “clearly of the view that the Funds should be wound up”. His reasons were summarised as follows:

- “a. the Funds have been frozen since October 2008, in that no redemptions of units have been permitted since then;
- b. since April 2011, the Funds have ceased paying interest on the units to members of the Funds;
- c. the disharmony between Mr Tucker and Mr Kennedy on the one hand and Mr McIvor on the other hand over the past 12 months or so, as more fully described in the affidavits of Mr Tucker, Mr Kennedy and Mr McIvor filed in BS9534/2011, has destabilised the Funds to such a degree that it is extremely unlikely that the Funds could regain the possibility of resuming trading;
- d. the vast majority of the loans owed to ETL as responsible entity for the EIF are in default and require intensive management so as to maximise the value realisable from those loans;
- e. as indicated in paragraph 8 of my earlier affidavit, I have received widespread support from members for the winding up and no objections. I am aware of an indication, by correspondence from Piper Alderman as solicitors for a number of members who have mooted a potential class action against ETL and its former directors, that there may be some opposition

to the winding up, but I have not yet seen the details of any such opposition and am accordingly unable to comment on the reasons for such opposition; and

- f. against this background, it is clear to me that the purpose for which each of the EIF and EPCIF were established can not be accomplished.”

- [21] Mr Vincent and his fellow directors reached the conclusion that it is in the best interests of members of the EIF and the EPCIF that each fund be wound up forthwith.
- [22] It is unnecessary to canvass the board's preference for the appointment of a temporary responsible entity pursuant to s 601FP to enable the winding up to proceed subject to oversight by a committee. Mr Vincent's affidavit indicated that if a responsible entity was not able to be appointed to replace the company as the responsible entity by Monday, 21 November 2011, then the board recommended that an independent insolvency practitioner be appointed to wind up each fund in accordance with the provisions of its constitution.
- [23] The assessment by Mr Vincent and his fellow-directors of what is in the best interests of members of each fund was undertaken in difficult circumstances. I accepted the considered view of the new board that it was in the best interests of members of each fund that each fund be wound up forthwith.
- [24] As noted, the only opposition to such an order was advanced by counsel on behalf of a small number of members who, according to their Notice of Appearance, hold units in the EIF totalling \$2,433,743.11. Those members also obtained leave to file an application seeking a variety of orders including a declaration that certain notices given pursuant to s 601NC of the Act were invalid and an order pursuant to s 252E(1) of the Act that a meeting of the members of the EIF be called to consider and vote on an extraordinary resolution directing the responsible entity to wind up the EIF. I took into account the submissions made on behalf of these members as to the desirability of allowing the members to meet and consider a resolution to wind up the EIF. I was not in a position to make any assessment of the merit of a submission made by Mr Tucker to the effect that the opposition to an order to wind up the funds forthwith was to achieve some collateral advantage in connection with foreshadowed proceedings against the company and its former officers. I declined these members' application to adjourn the company's application and decided to make orders directing that each fund be wound up pursuant to s 601ND because such a course appeared to be in the best interests of members of the funds. Any advantage in allowing the members to vote on a resolution to wind up the EIF at a yet-to-be convened meeting at some uncertain future date was outweighed by the disadvantages associated with delaying orders for the winding up of each fund.
- [25] In addition to the matters supporting a winding up forthwith identified by Mr Vincent is the fact that the board intended to resign prior to 3.00 pm on Monday, 21 November 2011 in the event that the company was unable to obtain insurance coverage. Such a course would leave the company without directors unless and until Mr McIvor obtained a release from the undertakings given in relation to the appointment of directors. There is evidence from former directors of the company that Mr McIvor does not wish the company to properly pursue a winding up of the

funds. There was no proposal for directors who were independent of Mr McIvor to be appointed as directors. The task of winding up the funds, including the recovery of loans upon which there has been default, should be undertaken by an independent person who is appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and any orders made under subsection 601NF(2).

[26] Part 5C.9 of the Act creates a framework for the winding up of registered schemes. In general terms, a registered scheme may be wound up:

- (a) as required by the scheme's constitution pursuant to s 601NA;
- (b) at the direction of members after a members' meeting to consider and vote on an extraordinary resolution directing the responsible entity to wind up the scheme, as envisaged by s 601NB;
- (c) pursuant to s 601NC, if the scheme's purpose is either accomplished or cannot be accomplished after the responsible entity gives members of the scheme and ASIC the written notice provided for in s 601NC(2) and if no meeting is called within 28 days of the responsible entity giving the notice to the members;
- (d) pursuant to s 601ND, by order of the Court either on the ground that the Court thinks that it is just and equitable to make an order directing the responsible entity to wind up the scheme or because of an unsatisfied judgment against the responsible entity in its capacity as the scheme's responsible entity.

[27] The company resolved in accordance with s 601NC that the funds should be wound up. Winding up under s 601NC could not commence until 25 November 2011 at the earliest, being 28 days after certain notices were given to members. However, a number of members requested a meeting of members to consider the proposed winding up of the EIF and to vote on an extraordinary resolution directing that the fund be wound up pursuant to s 601NB of the Act.

[28] In short, the company's proposal that the funds be wound up pursuant to s 601NC had been overtaken by events, and such a winding up would not commence until some uncertain future date, depending upon the calling of a meeting and the validity of certain notices. A winding up at the direction of members in accordance with s 601NB could not commence until the calling of a members' meeting to consider and vote on such a resolution. The date upon which such a meeting would occur was uncertain and the pending resignation of directors made uncertain the means by which such a meeting would be held. All parties, including ASIC, appeared to agree that the funds should be wound up. I was not persuaded that there was any particular advantage to the members of the fund by a delay in the commencement of the winding up of the funds. The circumstances that had arisen by 21 November 2011 made it appropriate to direct that each fund be wound up forthwith.

[29] Section 601ND(1)(a) authorises the Court to order that the responsible entity of a registered scheme wind up the scheme if the Court thinks it is "just and equitable to make the order". The principles concerning the winding up of companies on the

just and equitable ground inform the application of this provision.<sup>1</sup> A registered scheme may be wound up on the just and equitable ground because the administration and original arrangement have broken down.<sup>2</sup> The Court may wind up a registered scheme on the just and equitable ground if it is in the public interest to do so.<sup>3</sup>

[30] The evidence before me, particularly Mr Vincent's evidence, and the parties' submissions persuaded me that it was just and equitable to make orders directing the applicant, as responsible entity, to wind up each fund. The principal reasons for that conclusion are those contained in Mr Vincent's affidavit and which I have earlier quoted. They may be summarised as follows:

- (a) The administration of the funds has broken down and the funds' purposes cannot be accomplished;
- (b) Repayments to investors have been frozen since October 2008 and the funds ceased making monthly interest payments to members on 1 April 2011;
- (c) Disharmony and disputes between members of the board of the company and Mr McIvor prior to the recent appointment of new board members destabilised the administration of the funds with the result that it is extremely unlikely that the funds could resume trading;
- (d) The vast majority of the loans owed to the company as responsible entity for the EIF are in default and require proper management so as to maximise the realisation of funds for the benefit of members;
- (e) The company is in breach of the conditions of its Australian financial services licence, including by a failure to lodge audited accounts, and the company was also likely to be in breach of the conditions of its licence upon the expiry of necessary insurance coverage;
- (f) The members of the recently appointed board were due to resign prior to 3.00 pm on 21 November 2011, whereupon the proper administration of the funds would be jeopardised;
- (g) The appointment of an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2) appears to be in the best interests of members of each fund;
- (h) The winding up of the EIF appears to have received widespread support from members, and no member contended that the funds should not be wound up.

<sup>1</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 190, [2010] VSCA 2 at [104]; *Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 at [124]; *Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 at [44].

<sup>2</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 186, [2010] VSCA 2 at [86]; *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [63].

<sup>3</sup> *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [64]; *Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346 at 351, [2009] NSWSC 1068 at [23].

[31] For these reasons, I made orders on the afternoon of Monday, 21 November 2011 pursuant to s 601ND of the Act that:

- (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999; and
- (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999.

#### **Appointment of a person to take responsibility for the winding up of the funds**

[32] Section 601ND empowers the Court, by order, to direct the responsible entity to wind up the scheme. Section 601NE provides that the responsible entity must ensure that the scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2) if, among other things, the Court makes an order directing it to wind up the scheme. Section 601NF provides:

#### **“601NF Other orders about winding up**

- (1) The Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under subsection (2) if the Court thinks it necessary to do so (including for the reason that the responsible entity has ceased to exist or is not properly discharging its obligations in relation to the winding up).
- (2) The Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme’s constitution are inadequate or impracticable).
- (3) An order under subsection (1) or (2) may be made on the application of
  - (a) the responsible entity; or
  - (b) a director of the responsible entity; or
  - (c) a member of the scheme; or
  - (d) ASIC.”

[33] In the circumstances that presented themselves on 21 November 2011, including the jurisdictional impediment to the appointment of a temporary responsible entity pursuant to s 601FN and the pending resignation of recently appointed members of the company’s board, I considered it necessary to appoint a person to take responsibility for ensuring that each fund was wound up in accordance with its constitution and any orders made under subsection 601NF(2). No party argued against such a course. The pending resignation of the company’s directors made it necessary to appoint an independent person to take responsibility to wind up each fund. The parties accepted that an independent insolvency practitioner be appointed to wind up each fund. Different persons had indicated their preparedness to be

appointed. After hearing submissions I decided to appoint Mr David Whyte, who is an experienced insolvency practitioner.

### **Powers conferred by s 601NF**

- [34] Given the time constraints that applied in hearing the application and making appropriate orders on Monday, 21 November 2011, I was not in a position fully to consider that day the extent of the powers conferred upon Mr Whyte by virtue of his appointment to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and the extent of the Court's power to make orders pursuant to s 601NF(2) to facilitate the performance of his responsibility to ensure that each fund is wound up in accordance with its constitution. Having heard submissions, my provisional view was that orders might be made pursuant to s 601NF(2) directing that Mr Whyte act as a receiver of the property held by the company as:

- (a) responsible entity of the EIF; and
- (b) responsible entity of the EPCIF

However, I deferred making any orders pursuant to s 601NF in this regard so that I might consider relevant authorities concerning the power to make such orders pursuant to s 601NF.

### **Appointment of a receiver pursuant to s 1101B of the Act**

- [35] Soon after the commencement of the hearing on 21 November 2011, ASIC made an oral application pursuant to s 1101B of the Act for an order appointing a receiver of the property of each fund. The evidence and submissions indicated that the company had contravened the Act and one condition of its Australian financial services licence, and that upon the expiry of its insurance coverage would have contravened another condition. In the circumstances that I have earlier related concerning the need to appoint a person to take responsibility for ensuring that the funds were wound up, and in the absence of a specific order that Mr Whyte act as a receiver of the property of each fund, I made an interim order under s 1101B appointing him:

- (a) a receiver of the property of EIF; and
- (b) a receiver of the property of EPCIF

until 4.00 pm on Wednesday, 23 November 2011 or further earlier order. I was satisfied that such an order would not unfairly prejudice any person, and that such an order was in the interests of the members of each fund.

### **Further orders**

- [36] I have now had an opportunity to consider whether in lieu of a further order pursuant to s 1101B, or in addition to an order made under that section, Mr Whyte should be ordered pursuant to s 601NF to act as a receiver of the property of each fund and whether an order should be made as to the powers which he has to act as receiver.

- [37] I have set out the text of s 601NF above. The exercise of the power to appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(2) may arise for consideration in a wide variety of circumstances. For example, the originating application in this matter envisaged the appointment pursuant to s 601NF of a capable and competent temporary responsible entity pursuant to s 601NF to wind up the funds and for a committee consisting of Mr McDermid, Mr Vincent and a partner of Mr Vincent to be appointed to s 601NF to oversee the winding up. In other circumstances a responsible entity will not exist or will not be capable of winding up the registered scheme under the oversight of a person appointed pursuant to s 601NF. Section 601NF(1) contemplates such situations. One such situation is where the responsible entity "has ceased to exist". As ASIC submits, in such a case, unless a person appointed under s 601NF is empowered to deal with the assets of the scheme, that person will have no means to effect the winding up and the appointment would be rendered meaningless.
- [38] The terms of s 601NF(1) by which the Court may, by order, appoint a person "to take responsibility for ensuring" a registered scheme is wound up may be thought to necessarily carry with the appointment the authority to do such things as are necessary to wind up the registered scheme in accordance with its constitution and any orders made under subsection (2). McPherson SPJ (as his Honour then was) in *Re Crust 'N' Crumb Bakers (Wholesale) Pty Ltd*<sup>4</sup> stated that:

"Winding up is a process that consists of collecting the assets, realising and reducing them to money, dealing with proofs of creditors by admitting or rejecting them, and distributing the net proceeds, after providing for costs and expenses, to the persons entitled."

This statement has been approved by the Court of Appeal in *Mier v FN Management Pty Ltd*<sup>5</sup> and by the Full Court of the Federal Court in *Joye v Beach Petroleum N.L.*<sup>6</sup> Accordingly, an appointment pursuant to s 601NF may be said itself to authorise the appointed person to cause assets to be collected, realised and other steps taken so as to wind up the scheme in accordance with its constitution and any orders made under s 601NF(2). In general terms, the constitution of the EIF provides for the winding up to involve the conversion of the funds' assets to money and, after the payment of debts, the payment to members in proportion to the amount of the members' interests in the scheme.

- [39] Depending upon the circumstances of a particular case, the responsibility for ensuring that a registered scheme is wound up may involve the appointed person ensuring that the responsible entity undertakes these kind of tasks. In other circumstances, for example, because the responsible entity has ceased to exist or is incapable of doing these tasks, the appointed person may need to undertake them or engage someone else to do so.
- [40] The nature and extent of the powers which s 601NF confers upon an appointed person by virtue of his or her appointment is not clear from the terms of the statute. The matter is not clarified or illuminated by the Explanatory Memorandum to the

<sup>4</sup> [1992] 2 Qd R 76 at 78.

<sup>5</sup> [2006] 1 Qd R 339 at 347, [2005] QCA 408 at [15].

<sup>6</sup> (1996) 67 FCR 275 at 287, 290.

*Managed Investments Bill* 1997 (Cth) which simply stated in respect of proposed s 601NF (which is in identical terms to s 601NF as enacted) that:

“The Court may make other such orders as it sees fit.”

But the section, as enacted, is not in such simple terms. Instead, it provides for the appointment of a person pursuant to s 601NF(1), and goes on to provide that the Court may “by order” give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so. I note that subsection 601NF(2) is not simply a power to give directions.<sup>7</sup> It contemplates the Court making orders, not simply directions. The orders that might be made under s 601NF(2) are not confined to directions about winding up the scheme in accordance with its constitution. The section does not specify all of the circumstances under which it may be necessary to give directions, but the circumstances include the fact that the provisions in the scheme’s constitution are inadequate or impracticable.

- [41] The terms of s 601NF might be contrasted with the terms of s 601EE(2) in respect of unregistered managed investment schemes. Section 601EE(2) provides in such a case that the Court may make “any orders it considers appropriate for the winding up of the scheme.”
- [42] In *Re Stacks Managed Investments Ltd*,<sup>8</sup> White J compared s 601NF(2) with s 601EE(2) and considered the authorities in relation to s 601EE(2). Section 601EE(2) was said to empower the Court “to fashion the winding-up process.”<sup>9</sup> By contrast, s 601NF(2) gave power to make directions about how a registered scheme is to be wound up, where the winding up may already be on foot and should be provided for by the scheme’s constitution.
- [43] In that matter the plaintiff wished to have insolvency practitioners appointed as persons to take responsibility for ensuring that the scheme was wound up. The plaintiff sought the conferral of a wide range of powers on such persons. These included the power to conduct examinations in the same way that liquidators of companies have those powers. White J observed that the plaintiff had adapted the provisions of the *Corporations Act* dealing with the winding up of companies to the circumstances of the scheme. The plaintiff contended that powers could be conferred on the responsible persons, obligations imposed on third parties, and rights of creditors restricted to bring the winding up of the scheme into line with the winding up of companies.<sup>10</sup> His Honour observed that Part 5C.9 provides for the winding up of a registered scheme in accordance with its constitution and any order the Court might make under s 601NF(2). Where the scheme is a trust, what is envisaged by the winding up of a scheme is the realisation of its property, the payment by the responsible entity of liabilities incurred on behalf of the scheme or the retention by it of funds with which to meet its liabilities, the ascertainment of the members’ entitlements, and the distribution of the trust assets to the members in accordance with their entitlements.<sup>11</sup> The winding up of a trust was said to be quite a different thing from winding up a company, with the liquidation of a company being a matter governed by statute. His Honour observed that none of the detailed

<sup>7</sup> cf. the power of a Court to give directions under a provision such as the *Trusts Act* 1973, s 96 (Qld).

<sup>8</sup> (2005) 219 ALR 532, [2005] NSWSC 753.

<sup>9</sup> Ibid at 541, [37].

<sup>10</sup> Ibid at 537, [19].

<sup>11</sup> Ibid at 542, [42].

provisions of the *Corporations Act* that relate to the liquidation of a company applied to the winding up of a scheme.

- [44] The facts of that case are materially different to this proceeding. The plaintiff in that case sought the appointment of registered liquidators to provide the expertise which the plaintiff did not have in handling administrations. White J observed that the responsible entity was entitled under s 601FB to appoint those persons as its agents, or otherwise engage those persons, to do what the plaintiff was authorised to do in connection with the scheme. There was no necessity for an order under s 601NF(1). His Honour observed that such an order might be necessary if the plaintiff were failing in its duty to wind up the scheme, but there was no suggestion of that.
- [45] As to the proper scope for orders to be made under s 601NF(2), White J noted that the power was limited to giving directions about “how a registered scheme is to be wound up”. It did not authorise the Court “to confer additional powers upon a responsible entity to which third parties would be made subject, or to interfere with the rights which third parties would otherwise enjoy.”<sup>12</sup> His Honour went on to conclude that Parliament deliberately did not apply the regime for the winding up of companies to the winding up of registered schemes and that he did not read the power to give directions in s 601NF(2) “in the wide way for which the plaintiff contends as, in effect, permitting the court, by order, to impose a new legislative regime on the winding up of a particular scheme, and thereby affecting the rights of and imposing duties on third parties.”<sup>13</sup> I respectfully agree with these conclusions.
- [46] It is necessary, however, for me to consider whether s 601NF authorises the making of orders which are of a different kind.
- [47] In *Re Rubicon Asset Management Ltd*,<sup>14</sup> McDougall J was likewise concerned with the scope of the power to make orders pursuant to s 601NF(2). The matter in issue was a direction that the costs of winding up be borne by the responsible entity. The power to give such a direction was found to exist. The direction was not one which would take away any right that a third party had, or would subject a third party to any form of compulsory process for production of documents or examination. The order sought by the plaintiffs in that case was made. McDougall J noted that in *Re Stacks Managed Investments* White J gave as an example of what was authorised by s 601NF(2) “the making of directions of a kind which would be made in an administration suit for the purpose of settling the entitlements of members”. McDougall J stated that White J was not intending to give an exhaustive account of the width of the statutory power. Like McDougall J and White J, I do not propose to canvass the full extent of the power to give directions under s 601NF(2). My present concern is whether s 601NF authorises the Court by order to give a direction about how a registered scheme is to be wound up by giving a direction that the person to take responsibility for ensuring that the registered scheme is wound up has the power to act as a receiver of the property held by the company as responsible entity of the fund.

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<sup>12</sup> Ibid at 544, [52].

<sup>13</sup> Ibid at 545, [55].

<sup>14</sup> (2009) 74 ACSR 346, [2009] NSWSC 1068.

- [48] In *Mier v FN Management Pty Ltd*<sup>15</sup>, Keane JA (as his Honour then was, and with whom McMurdo P and Douglas J agreed) was concerned with the power conferred by s 601EE(2) in relation to the getting in, realisation and distribution of the property of an unregistered managed investment scheme. Because the Act did not explicitly lay down a method for the winding up of an unregistered scheme, Keane JA stated that it must be assumed that, in general, the Court would be guided by analogies with the law relating to the winding up of companies, partnerships and trusts when deciding on the appropriate procedure for the winding up of a scheme. His Honour went on to observe that the best analogy might be thought to be the winding up procedure applicable to a registered scheme and continued:

“Unfortunately for present purposes, the Act, beyond directing that a registered scheme be wound up in accordance with its constitution, also **leaves the detail of the winding up of a registered scheme in the hands of the Court**, which may make such orders as it ‘thinks necessary to do so’.”<sup>16</sup> (emphasis added)

- [49] In *Capelli v Shepard*<sup>17</sup> the Victorian Court of Appeal made a passing comment in the context of a submission that the Court might give directions about whether the scheme property included certain trees. The Court did not think it appropriate to exercise the power under s 601NF(2) as suggested. Its first reason was that the question was not in terms raised in the appeal. Its second reason was that the Court was “not at all confident that a power such as this might be used to affect rights to property.” The Court observed that it “may be that ‘directions as to how a registered scheme is to be wound up’ are limited to procedural rather than substantive matters.” The Court did not develop this point or attempt to define the difference between procedural and substantive matters.
- [50] I am not concerned with an application of the kind that White J rejected in *Re Stacks Managed Investments Ltd*. The application does not seek an order that would give the person appointed pursuant to s 601NF(1) powers in relation to the property of third parties. The application does not seek to adapt and impose detailed provisions dealing with the winding up of companies to the circumstances of a registered scheme.
- [51] I am concerned with a question of whether s 601NF authorises the person who I have appointed to take responsibility for ensuring the funds are wound up to act as a receiver of the property of each fund. There may be doubt as to whether the appointment itself confers such a power. It may be thought necessary to make an order pursuant to s 601NF(2) directing the appointed person to act as receiver since such an order is one which gives directions about “how a registered scheme is to be wound up”. Such an order will be made only if the Court thinks it necessary to do so. For example, the occasion to make such an order may arise if the responsible entity is either unable or unwilling to wind up the scheme, or itself to appoint a person to collect the property of the scheme, realise it and otherwise undertake the winding up of the scheme in accordance with its constitution.
- [52] I am satisfied that in an appropriate case s 601NF(2) gives the Court power, by order, to give directions that the person appointed to take responsibility for ensuring

<sup>15</sup> [2006] 1 Qd R 339, [2005] QCA 408.

<sup>16</sup> Ibid at 348-349, [18] (footnotes omitted).

<sup>17</sup> (2010) 264 ALR 167 at 197, [2010] VSCA 2 at [146].

a registered scheme is wound up act as a receiver of the property of the scheme. The Court may exercise the power if it thinks it necessary to do so and one such circumstance might be if the property of the scheme was in jeopardy because the responsible entity was unable or unwilling to collect the property, realise it and do the other things necessary to wind up the scheme.

- [53] The present application is concerned with property that is held on trust. The person that I have appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution is required to ensure that a trust is wound up, but cannot necessarily rely upon the responsible entity itself to perform that task. In the analogous situation of a private trust in which trustees fail to get in trust property, a receiver may be appointed on the application of one of the trustees or of any beneficiary where the appointment is required for the safety of the trust property (the basis of the jurisdiction being the jeopardy of that property).<sup>18</sup> The Court may appoint a receiver of trust property where that is necessary for the well-being of the trust.<sup>19</sup> The Court will appoint a receiver of trust property where that property is in jeopardy through misconduct, waste, improper disposition, breach of a trustee's duty or the unsuitable character of the trustee.<sup>20</sup> The case in favour of appointment of a receiver must be a strong one but in assessing the risk to the trust the Court will apply a qualitative judgment.<sup>21</sup> In my view, the exercise of the power conferred by s 601NF(2) to order that the person who has been appointed to take responsibility for ensuring that the registered scheme is wound up act as a receiver of the scheme's property should be exercised with a similar caution, and only where a strong case is made out for the need for such an order.
- [54] Having now had the opportunity to consider the authorities cited to me at the hearing on 21 November 2011, I consider that s 601NF(2) provides a source of power to make an order giving directions that Mr Whyte act as a receiver of the property of each fund.
- [55] On the morning of Wednesday, 23 November 2011, I heard submissions as to whether it is appropriate to extend Mr Whyte's appointment as a receiver pursuant to s 1101B and to make a similar order pursuant to s 601NF(2). I decided to make such orders and my reasons for doing so follow.
- [56] In this matter the Court has directed the responsible entity, namely the company, to wind up each scheme. In the circumstances earlier outlined, it was necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2).
- [57] The appointment of a receiver of the property of each fund pursuant to s 1101B on ASIC's application and also pursuant to s 601NF(2) was supported by ASIC, and the members of the funds for whom Mr Martin SC and Mr Tucker respectively appeared. On this morning's hearing it was opposed by the company and by Mr McIvor for whom Mr Peden of Counsel appeared. Following the resignation of Mr

<sup>18</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 47, [2000] VSC 300 at [66]; J.D. Heydon and M.J. Leeming, *Jacobs' Law of Trusts in Australia*, 7th ed (Chatswood: LexisNexis Butterworths, 2006) at 625, [2305].

<sup>19</sup> *Ibid.*

<sup>20</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 52, [2000] VSC 300 at [84].

<sup>21</sup> *Ibid.*

Vincent, Mr McDermid, Mr Bingham and Mr Powell at 2.50 pm on Monday, Mr McIvor as sole shareholder of the company appointed himself, his wife Ms Stacey McIvor and Mr Ross Honeyman as directors.

- [58] Whereas on Monday, 21 November, the company did not oppose the appointment of Mr Whyte as a receiver of the property of the funds, it now does so. Mr Peden submitted on its behalf and on behalf of Mr McIvor that there was no need to appoint Mr Whyte as a receiver pursuant to s 1101B(1) or s 601NF(2).
- [59] ASIC made submissions as to why there was such a need. ASIC's submissions were adopted by Mr Martin SC on behalf of the members he represents. Mr Tucker also supported Mr Whyte's appointment as a receiver for essentially the same reasons.
- [60] ASIC placed particular reliance upon the affidavits upon which it previously relied, and on its previous submissions in this proceeding and in proceeding BS9694 of 2011, being a proceeding which it brought against the company. In summary, ASIC submits that there is no dispute that the company is in breach of a condition of its Australian financial services licence—that it hold a minimum amount of net tangible assets ("NTA")—and has breached provisions of the Act requiring the company to lodge audited financial reports for each fund and audited reports of its compliance with the compliance plans for both funds. The affidavit material upon which ASIC relies, particularly an affidavit of Ms Gentles, and ASIC's written submissions detail the circumstances of these breaches.
- [61] ASIC was sufficiently concerned by the company's breaches of its licence and breaches of sections of the Act that it issued a Notice of Hearing under s 915C of the Act requiring the company to show cause as to why its licence should not be cancelled. Prior to that hearing it brought proceedings against the company, as did Tucker SF Pty Ltd. The material upon which ASIC relied included the matters that I have earlier addressed, and also identified substantial concerns as to how the company operated or proposed to operate each fund, the instability of the company's board and Mr McIvor's ability to change the board of the company at any time and without notice.
- [62] The affidavit of Ms Gentles is a substantial document, and contains material which justified ASIC's concern that Mr McIvor may not deal with the assets of the EIF in the best interests of members. The material relied upon by ASIC that supported its concern in this regard included documents that recorded the concerns of the board of the company in September and October 2011 about Mr McIvor's conduct. This included the then board's view that Mr McIvor "was responsible for making all of the current problem loans". It also included claims that he had demonstrated extremely poor judgment in recent times (evidenced by emails attached to an affidavit filed in proceedings brought against the company by a borrower that had acquired a unit in the EIF and commenced proceedings to wind up the company). It included the directors' view that Mr McIvor had continued to deal on an unauthorised basis with some borrowers. Mr McIvor was said to be in ongoing conflict with the board and senior management and to have made a series of threats against staff.
- [63] Exhibits to Ms Gentles's affidavit provided evidence from a former chairman, a former director and a former CEO of the company about the exercise by Mr McIvor

of his ability to change the company's personnel and directors without notice and without consultation.

[64] ASIC sought relief in the proceedings that it brought against the company and submitted on that occasion that such relief was appropriate in circumstances where:

- (a) the company was, by its own admission, in breach of the NTA requirements imposed by its licence;
- (b) the company had failed, despite specific requests by ASIC, to notify ASIC of its current NTA position;
- (c) the company had failed to lodge audited financial reports allowing ASIC to make an assessment of its financial position;
- (d) the company had breached provisions of the Act in failing to lodge audited financial reports and audited reports of its compliance with compliance plans for both funds;
- (e) the board of the company had been in a state of upheaval, with Mr McIvor apparently focused on ways to develop the assets of EIF, rather than simply proceeding with an orderly winding up.

These matters were said to pose an increased risk that the company might seek to operate the EIF in a manner which was not in the best interests of members.

[65] On 27 October 2011, Martin J made consent orders in relation to the operation of the EIF and the EPCIF on ASIC's application.

[66] In the application brought by Tucker SF Pty Ltd there were many allegations of misconduct by Mr McIvor. Mr McIvor's affidavit sworn 26 October 2011 stated that in respect of Mr Tucker's numerous allegations against him:

"I am deliberately not responding to those allegations as I do not consider them relevant to the present application. My response to those matters will occur in the fullness of time. By not responding to them in this affidavit I should not be taken as accepting the correctness of what Mr Tucker has said."

I am not in a position to resolve the allegations made by Mr Tucker against Mr McIvor.

[67] The concerns raised by ASIC include concerns based upon facts, about which there is no dispute, relating to the company's failure to comply with the conditions of its licence and the requirements of the Act.

[68] Mr McIvor gave undertakings to the Court on 26 October 2011 that he would not appoint a new director to the board of the company, or remove a director or seek to remove a director from its board without giving seven days' notice to the existing board and to ASIC, and seeking the leave of the Court after expiry of that notice. He also gave an undertaking that he would not seek to interfere with the conduct of the board in its business and the discharge of its responsibilities on the basis that it was clear that he was entitled to put properly documented proposals before the

board for its consideration. Mr McIvor stated that he gave these undertakings to “safeguard any concerns which may be held regarding the independence of the Board and Board members being subject to influence”.

[69] Following the resignation of the directors on Monday, I released Mr McIvor from these undertakings so that the company would have directors. There is no indication that Mr McIvor will not remain a director of the company. There is no indication that he intends to resign as a director and replace himself with other directors who are clearly independent of him. There is no evidence that independent directors would be prepared to assume such a role, and with the expiry of relevant insurance policies there is every reason to suppose that independent directors would not be willing to accept appointment in the absence of the kind of insurance cover that Mr Vincent and his fellow directors were unable to obtain.

[70] The matters raised by ASIC in the proceedings commenced by it, and also in these proceedings, raise serious concerns about the ability of the company while it remains under Mr McIvor’s control, and while he remains a director:

- (a) to operate each fund in a manner that will comply with the Act and the conditions of its Australian financial services licence; and
- (b) to act in a manner which is in the best interests of the members of each fund.

I am not persuaded that the company will wind up the funds in a manner that is in the best interests of their members. On the contrary, the matters relied upon by ASIC and the members who support the appointment of Mr Whyte as a receiver raise a strong case that the appointment of a receiver is necessary to ensure that each scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(1).

[71] Whereas the company on Monday did not oppose the making of orders for the appointment of a receiver, it now submits that such an appointment is premature and unfairly prejudicial to the interests of members. It and Mr McIvor submit that I should not assume that there will be problems in the orderly conduct of the winding up that I have ordered, that the company should be given the opportunity to wind up each scheme in accordance with its constitution and that Mr Whyte should only be appointed as a receiver if and when problems arise. They submit that it is not in the interests of members for Mr Whyte as receiver to assert control over the property of the funds and that the property of the funds should be left in the control of the company as a responsible entity, subject to the responsibility that Mr Whyte has by virtue of his appointment pursuant to s 601NF to take responsibility for ensuring that each scheme is wound up in accordance with its constitution.

[72] I do not accept this submission. I conclude that the best interests of most members of the funds, and the winding up of each scheme in accordance with its constitution, will be served by the appointment of Mr Whyte as a receiver. Such an appointment will avoid confusion and possible disputes over the control of property. Placing the property of the funds under the control of Mr Whyte as a receiver is likely to facilitate its realisation and the winding up of each fund for the benefit of its members. The appointment of Mr Whyte as receiver does not preclude him from having employees of the company (past, present and future) undertake tasks that are required to wind up each fund. As I mentioned more than once during the course of

argument, the best interests of members would appear to be served by relying upon the knowledge, skill and experience of persons who are familiar with the company's affairs, including persons who have taken steps to realise its property in the best interests of members. I am not, however, persuaded that the property of each fund should be left under the control of the company, subject only to the oversight of Mr Whyte by virtue of an appointment under s 601NF(1). The company's history of non-compliance with its statutory obligations, breaches of the conditions of its licence and the evidence pointed to by ASIC in relation to Mr McIvor present a strong case for the appointment of a receiver of each fund's property. The orderly conduct of the winding up of each fund will be facilitated by clarification of the fact that Mr Whyte is not only responsible for ensuring that each scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2), but that he has the power to do so, including the power of a receiver to take control of the property to which he has been appointed receiver and to deal with that property in a way that facilitates the winding up of each fund in a manner, and within a timeframe, that realises the property of each fund in the best interests of members.

- [73] I am not satisfied that Mr Whyte will be able to ensure that each fund is wound up in a timely, efficient and cost-effective manner unless he is appointed as a receiver of the property of each fund. I consider that it is in the interests of the members that the property of the funds be under his control.
- [74] In general, the circumstances that made it necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under s 601NF(2) also persuade me that it is in the best interests of each fund that the same person be appointed as receiver of its property. I am persuaded that the appointment of a receiver is necessary for the well-being of the property which is held on trust by the company, and to ensure that the winding up of each fund occurs in accordance with its constitution and any orders made under s 601NF(2).
- [75] Mr Peden also submitted that I should not appoint Mr Whyte as a receiver because such an order would cut across the legislative framework governing the winding up of a registered scheme. I do not agree with that submission.
- [76] First, insofar as an appointment as receiver pursuant to s 1101B(1) is concerned, the company's contravention of the Act and its contravention of conditions of its Australian financial services licence justify the appointment of a receiver in the circumstances. There is nothing inconsistent with the legislative framework for the winding up of a registered scheme in exercising a power conferred under s 1101B. Such an order may aid the winding up of a registered scheme.
- [77] Secondly, I do not consider that the legislative framework of Part 5C.9 precludes the appointment of a receiver pursuant to s 601NF(2) if it is necessary to do so. I have concluded in the circumstances of this matter that an order giving a direction that Mr Whyte be appointed as receiver of the property is necessary.
- [78] I raised during argument the issue of whether it was necessary for Mr Whyte to be appointed as a receiver pursuant to s 1101B(1) and also pursuant to s 601NF(2) of the Act. However, the parties supporting his appointment favoured such a course, and I intend to make such orders. To the extent that there may be some doubt concerning the extent of the Court's power to appoint a receiver pursuant to

s 601NF(2), I consider that the best interests of the members will be protected by making an order under s 1101B(1) of the Act. Even with an appointment as receiver under s 1101B(1), I think that it is necessary also to appoint Mr Whyte as a receiver pursuant to s 601NF(2). Such an appointment makes clear that one source of his power to act as receiver is s 601NF. It is appropriate that, in carrying out his responsibility for ensuring that the registered scheme is wound up in accordance with its constitution, he have powers that are sourced in the section of the Act that imposes that responsibility. Further, the possibility exists that in the future the Court may rescind or vary the order made under s 1101B, or suspend its operation, pursuant to s 1101B(11). If that occurs Mr Whyte should continue to have the powers and responsibilities associated with appointment as a receiver pursuant to s 601NF(2).

- [79] Mr Whyte's appointment as receiver should not be perceived to be based solely upon the contraventions by the company which attract the operation of s 1101B. It should be clear that Mr Whyte is also being appointed a receiver of the property of each fund because such an appointment is thought necessary to facilitate the performance of his responsibility for ensuring that each scheme is wound up in accordance with its constitution. The winding up of each fund will be facilitated by an order that indicates that one purpose of the appointment of Mr Whyte as receiver of the property of each fund is to facilitate the fund being wound up in accordance with its constitution. Mr Whyte, in discharging his responsibilities which arise by virtue of his appointment under s 601NF(1), will have the power to receive the property of each fund, and the directors of the company, its employees and third parties should understand that a source of the power which he is given to facilitate the responsibility imposed upon him by s 601NF(1) is s 601NF(2). He should have the power of a receiver and the order should state that one source of that power is an order made under s 601NF(2).
- [80] If I had acceded to the submissions made by the company and Mr McIvor this morning and not appointed Mr Whyte as a receiver, then there would have been scope for dispute and disagreement between Mr Whyte and individuals in control of the company, including Mr McIvor, concerning the control of the property of each fund. I consider that the appointment of Mr Whyte as a receiver will reduce the scope for such disputes.
- [81] In short, an order pursuant to s 601NF(2) directing that Mr Whyte be appointed as a receiver of the property of the EIF and a receiver of the property of the EPCIF is in the best interests of members and is necessary to facilitate the winding up of each fund.
- [82] A copy of the orders made by me on 21 November 2011 and a copy of the orders made by me today are set out as annexures to these reasons.

## SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/11

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

## ORDER

Before: Justice Applegarth

Date: 21 November 2011

Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011

## THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the “Act”):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 (“EIF”);
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 (“EPCIF”).
2. David Whyte (“**Mr Whyte**”) be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-
  - (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;

- (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.
8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/11

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE  
EQUITITRUST PRIORITY CLASS INCOME FUND ARSN  
089 079 729**

**ORDER**

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21 November 2011

THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (*the Act*) David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
2. Pursuant to s.601NF(2) of the Act David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and

- (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
  4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
  5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
  6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.

7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.
8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089  
079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY  
CLASS INCOME FUND ARSN 089 079 729**

**ORDER**

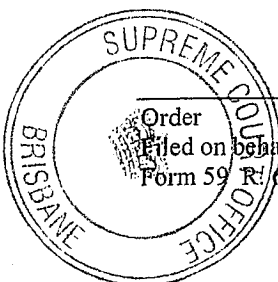
Before: The Honourable Justice Mullins  
Date: 25 October 2012  
Initiating Document: Application filed 21 September 2012

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 22 November 2011 to 31 August 2012, be fixed in the amount of \$837,103.85 (inclusive of GST); and
2. The costs of and incidental to the application filed on 21 September 2012 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed: 

DEPUTY REGISTRAR



Order  
Filed on behalf of the court appointed receiver  
Form 59 R/661

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

BNEDOCS Order of Justice Mullins dated 25 October 2012

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089  
079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY  
CLASS INCOME FUND ARSN 089 079 729**

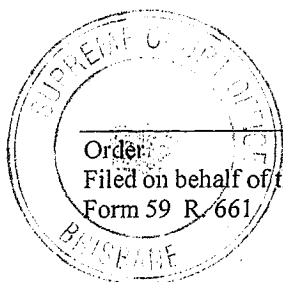
**ORDER**

Before: Justice JS Douglas  
Date: 12 June 2013  
Initiating Document: Application filed 16 May 2013

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 September 2012 to 30 April 2013 be fixed in the amount of \$842,843.10 (inclusive of GST); and
2. The costs of and incidental to the application filed on 16 May 2013 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed: 



*Duplicate*

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781  
BNEDOCs Draft Order dated 12 June 2013 (2) (2)

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089  
079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY  
CLASS INCOME FUND ARSN 089 079 729**

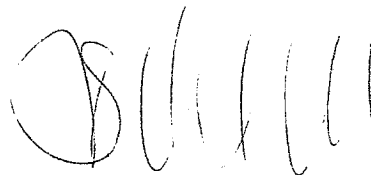
**ORDER**

Before: Justice Dalton  
Date: 28 November 2013  
Initiating Document: Application filed 12 November 2013

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 May 2013 to 31 October 2013 be fixed in the amount of \$667,795.70 (inclusive of GST); and
2. The costs of and incidental to the application filed on 12 November 2013 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:



Deputy Registrar

Order  
Filed on behalf of the court appointed receiver  
Form 59 R.661

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

BNEDOCs Draft Order dated 28 November 2013

**Duplicate**

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

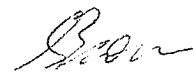
**ORDER**

Before: Justice P Lyons  
Date: 3 June 2014  
Initiating Document: Application filed 15 May 2014

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 November 2013 to 30 April 2014 be fixed in the amount of \$503,435.35 (inclusive of GST); and
2. The costs of and incidental to the application filed on 15 May 2014 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:



Deputy Registrar

Order  
Filed on behalf of the court appointed receiver  
Form 59 R. 661

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSO:201204781  
BNEDOCs Draft Order dated 3 June 2014 (2)

"DW-3"

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## Consolidated constitution

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Equititrust Income Fund ARSN 089 079 854

Equititrust Limited ACN 061 383 944

Version: 1

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## Deed poll

Dated

3<sup>rd</sup> June 2011

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By

Manager

**Equititrust Limited ACN 061 383 944**

of 67 Thomas Drive, Chevron Island, Queensland

In favour of

Members

## Background

- A. The Manager is the responsible entity of the Equititrust Income Fund ARSN 089 079 854 established by Deed Poll dated 9 August 1999 as amended from time to time.
- B. Pursuant to a request from ASIC under section 601GC(3) of the Corporations Act the Manager lodges this consolidated copy of the Constitution. This consolidated Constitution is an amalgam of the original Deed Poll and all subsequent amendments to that Deed Poll.
- C. This Constitution is made with the intent that the Manager and each Member will be bound by it.

## Agreed terms

### Trust not Confirmed

- (a) Nothing expressly or impliedly contained in this consolidated Constitution (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this consolidated Constitution.
- (b) Certain clauses (as identified) in this consolidated Constitution are reproduced (for the purpose of explanation only), but do not replace or restate the existing clauses.
- (c) Nothing in this consolidated Constitution should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

### Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this amending deed.

## **1 DEFINITIONS AND INTERPRETATIONS**

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### **1.1 Defined Terms**

In this Constitution unless the context otherwise requires:

**'Accounting Standards'** has the meaning given to that term in section 9 of the Law;

**'Applicant'** means a person who has completed and lodged with the Manager an Application, pursuant to a Prospectus, and has paid the Application Money to which the Application refers, and includes his or her successors in title and permitted assigns;

**'Application'** means a duly completed and signed application to invest in the Scheme, lodged with the Manager and accompanied by payment of the Application Money;

**'Application Account'** means the Bank account established by the Manager under clause 3.3;

**'Application Money'** means all money paid by the Applicant pursuant to a Prospectus, accepted by the Manager and held by the Manager in the Application Account;

**'Approved Valuer'** means any person or firm appointed by the Manager, to value any property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 2 years continuous experience of valuation; or
- (c) because of their experience or qualifications, the Manager considers is suitably qualified to provide an assessment of the value of the relevant property.

**'Assets'** means all assets and liabilities of the Scheme which are, or would be, recognised as assets or liabilities of the Scheme by the application of generally accepted accounting principles;

**'Associate'** means an associate as defined in division 2 of part 1.2 of the Law;

**'Auditor'** means the auditor for the Scheme, appointed by the Manager, as required under the Law;

**'Authorised Investments'** means:

- (a) Mortgage Investments;
- (b) deposits at call or for a term with any Bank;
- (c) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank; and
- (d) any authorised investment as defined in section 21 of the Queensland *Trusts Act 1973*.

**'Bank'** has the meaning given to an Authorised Deposit Taking Institution as that term is defined in the *Banking Act 1959* and also includes a bank constituted by or under a law of the State or Territory and a 'foreign bank' as that term is defined in section 5 of the *Banking Act 1959*;

**'Benchmark Return'** is the relevant distribution hurdle rate for each Member (as nominated by the Manager when the Member invests in the Scheme) which that Member must receive from their investment in the Scheme before the Manager is entitled to receive the management fee referred to in clause 21.1. The Benchmark Return is not a forecast or a representation that the Member will receive this return or indeed any return from their investment in the Scheme;

**'Business Day'** means any day on which trading banks on the Gold Coast are generally open for business;

**'Cash'** includes cheques, currency notes, bank cheques, bank transfers and bank drafts in the lawful currency of Australia or another country;

**'Certificate'** means a certificate or document issued by the Manager to the Applicant evidencing the acceptance by the Manager of the Application;

**'Commencement Date'** means the date on which the Constitution was originally registered by the Commission;

**'Commission'** means the Australian Securities and Investments Commission;

**'Compliance Plan'** means the compliance plan for the Scheme and registered by the Commission and includes any approved amendments to the compliance plan from time to time;

**'Constitution'** means this Deed, and prior to thereto, shall where the context permits, also include the Former Constitution;

**'Current Interest Value'** means:

- (a) in relation to an Interest for the purpose of determining the Issue Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 3.16; and
- (b) in relation to an Interest for the purpose of determining the Redemption Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 11.19;

**'Current Liabilities'** in respect of the Scheme includes all of those Liabilities of the Scheme that would in the ordinary course of business be due and payable within 12 Months from the date on which they are ascertained;

**'Current Value'** means in relation to the Scheme the amount derived by deducting from the Value of the Assets of the Scheme:

- (a) all amounts borrowed for the purpose of the Scheme and remaining owing;
- (b) the amount of all actual Liabilities of the Scheme (other than interest and those referred to in paragraph (a) of this definition) owing but unpaid;
- (c) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Scheme (other than those referred to in paragraphs (a) and (b) of this definition);
- (d) such amounts which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments of the Scheme (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (e) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Scheme;

**'Delay Event'** means a circumstance where any of the following exist:

- (a) the Scheme's cash reserves fall and remain below 5% of the total assets of the Scheme for 10 consecutive Business Days; or
- (b) if in any period of 90 days, the Manager received valid net redemption requests equal to 10% or more of the Scheme's issued Interests and, during the period of 10 consecutive days falling within the 90 day period, the Scheme's cash reserves are less than 10% of the total assets of the Scheme; or

- (c) the Manager is not satisfied that sufficient cash reserves are available to pay the Redemption Price on the appropriate date and to pay all actual and contingent liabilities of the Scheme; or
- (d) any other event or circumstance arise which the Manager considers in its absolute discretion may be detrimental to the interests of the Members of the Scheme.

**'Distribution Amount'** means, in relation to the Scheme, the amount of any Income Warranty applicable to the particular Member;

**'Distribution Period'** means the period referred to in clause 8.4;

**'Dispute Resolution Service'** means the dispute resolution service approved by the Commission which the Manager nominates from time to time;

**'Distributable Income'** means subject to clause 8.5 any amount determined by the Manager from time to time to be distributed to Members, including –

- (a) the net income of the Scheme
- (b) other Income of the Scheme, and
- (c) any amount of capital of the Scheme.

**'Distribution Surplus'** means the surplus Income of the Scheme distributed in the manner provided in clause 8.5;

**'Expert'** includes solicitors, barristers, accountants, bankers, financial advisers, an Approved Valuer and other professionally qualified consultants;

**'Facility Agreement'** means any agreement (including any borrowing arrangements) to which the Manager is a party which may limit the capacity of the Manager to deal with Subordinated Interests;

**'Fees'** means all fees (including application and penalty), charges, late interest penalty payments paid by borrowers to the Manager on Mortgage Investments;

**'Financial Statements'** has the meaning given to that term in section 9 of the Law;

**'Financial Year'** means the period of 12 months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Scheme;

**'First Mortgage'** means a registered first mortgage over the Land;

**'Former Constitution'** means the Deed Polls dated 9 August 1999 and 6 September 1999 made by the Manager and referred to in the Recitals;

**'Gross Asset Value'** means the aggregate of:

- (a) the Market Value of all investments of the Scheme including cash and amounts owing to the Scheme;
- (b) any prepayment of expenditure; and
- (c) such other increments or decrements as the Auditor approves to be included;

**'GST'** means a tax, impost or duty on goods, services or other things introduced by the Commonwealth, State or Territory either before or after the date of this Constitution;

**'GST Act'** means A New Tax System (Goods & Services Tax) Act 1999 as amended;

**'Income'** means all receipts from Authorised Investments which are paid into the Scheme Account;

**'Income Warranty'** has the meaning given to that term under Clause 8;

**'Interest'** means an undivided share in the Scheme as provided in clause 2;

**'Interest Liabilities'** means the liability of the Scheme to the Members for their undivided Interest in the Assets.

**'Investment Deed'** is the deed by the holder of Subordinated Interests in favour of (amongst others) the Manager (in its capacity as responsible entity of the Scheme) relating to the acquisition, holding and redemption of Subordinated Interests;

**'Issue Price'** means in relation to the issue of an Interest, an amount equal to the Current Interest Value of the Interest at the time of Issue plus:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the issue of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the issue of the Interest not included in the Issue Provision; and
- (c) the Issue Provision;

**'Issue Provision'** means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Application Money into Authorised Investments;

**'Issued Interests'** means all Interests for the time being created and Issued and not cancelled;

**'Land'** means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and including buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon;

**'Law'** means the Corporations Act 2001 and Corporations Regulation;

**'Liabilities'** in respect of the Scheme includes:

- (a) unpaid administrative costs and expenses, including fees of the Manager;
- (b) accrued charges in respect of or owing in relation to any Asset of Scheme;
- (c) amounts required to meet present liabilities of the Scheme;
- (d) amounts of all borrowings of the Scheme;
- (e) any provisions for Taxes which, in the opinion of the Manager, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Manager, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition;

**'Manager'** means Equititrust Ltd or any other person for the time being acting as manager, provided that at all times the Manager is the responsible entity of the Scheme as defined in section 9 of the Law and the trustee of this trust;

**'Market Value'** of an investment means the current market value determined in accordance with a method agreed between the Manager and an Approved Valuer or Expert. If there is a

dispute between the Manager and the Approved Valuer, the decision of the Approved Valuer shall prevail;

**'Member'** means a person whose Application is accepted and for the time being is registered under the provisions of this Constitution as a member of the Scheme and includes persons jointly so registered;

**'Minimum Investment Amount'** is the minimum investment by the holder of a Subordinated Interest as provided under the Investment Deed;

**'Minimum Redemption Amount'** means the minimum amount a Member can withdraw from the Scheme at any time, as disclosed in the Prospectus;

**'Month'** means calendar month;

**'Mortgage Investment'** means a loan secured by a registered mortgage over Land and other property subject to the following provisions:

- (a) the mortgage will rank as a registered First Mortgage and/or Second Mortgage over the mortgaged Land; and
- (b) the total of all money advanced and secured over such Land and any other property, shall not exceed 80% of the value of the Land and other property that has been valued by an Approved Valuer as shown in the valuation furnished by an Approved Valuer; and
- (c) the loan shall be for a maximum period of 30 years.

**'Officer'** means a person who is a director, secretary or executive officer of the Manager;

**'Prospectus'** means a product disclosure statement or any offer document issued by the Manager inviting Applications or offers to join the Scheme established by the Constitution or where the context requires, means the documentation that forms part of the disclosure inviting Applications or offers to join the scheme established by the Constitution;

**'Quarter'** means each period of 3 months ending on the last days of March, June, September and December in each year;

**'Redemption Amount'** means the number of Interests to be redeemed or repurchased multiplied by the relevant Redemption Price less any Taxes;

**'Redemption Date'** means the date determined by the Manager in accordance with clause 11.1 or 11.17 with effect from which an Interest is to be redeemed or repurchased;

**'Redemption Price'** means in relation to the redemption of an Interest, an amount equal to the Current Interest Value of the Interest at the time of redemption less:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the redemption of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the redemption of the Interest not included in the Redemption Provision; and
- (c) the Redemption Provision.

**'Redemption Provision'** means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Authorised Investments into cash;

**'Register'** means the register of Members to be established and kept by the Manager under clause 12.1;

**'Regulations'** means the Corporations Regulations of Queensland;

**'Related Party'** means a related party as defined in part 5C.7 of the Law;

**'Scheme'** means the scheme established in accordance with the Constitution;

**'Scheme Accounts'** means the Bank accounts of the Scheme established and maintained in accordance with the Law and any ASIC policy;

**'Second Mortgage'** means a registered second mortgage over the Land;

**'Statutory Revenue Charge'** means a fee, tax, fine, duty, penalty, impost or other charge imposed by statute, rule or regulation and includes any bank account debit or financial institutions duty or tax;

**'Subordinated Interest'** is an Interest in the Scheme with the special rights and restrictions as provided in clause 2.12;

**'Tax Act'** means the *Income Tax Assessment Acts of 1936 and 1997* (Cth) and the regulations made thereunder from time to time; and

**'Taxes'** includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Scheme, a Members Interest or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, charges, fees GST, or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
  - (i) Application Money;
  - (ii) the Scheme, a Members Interest, Scheme Accounts, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Scheme, a Members Interest, the Assets or the Authorised Investments; or
  - (iii) the Manager in its capacity as manager of the Scheme,
  - (iv) all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debts tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Member or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

**'Value'** of an Asset when the value of that Asset is required to be ascertained or taken into account under this Deed or the Scheme shall mean its Market Value as last determined.

**'Wholesale Client'** has the meaning contained in the Law;

**'Withdrawal Date'** is the date from which a Member is entitled to have their Interests redeemed by the Manager as provided in clause 11.

**'Withdrawal Request Form'** means the request form prescribed by the Manager and given to the Manager by a Member for the purposes of clause 11.

## **1.2 Interpretation**

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person include corporations and body corporates and vice versa;
- (c) words denoting gender include both genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and do not affect interpretation;
- (i) references to a party to this Constitution include the party's successors and permitted assigns;
- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution; and
- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

## **2 CONSTITUTION AND DURATION**

### **2.1 Equititrust Income Fund**

**[Not altered but reproduced]**

The Constitution establishes the Equititrust Income Fund, which commences on the Commencement Date.

### **2.2 Assets of the Scheme**

**[Not altered but reproduced]**

The Manager declares that it holds and will at all times hold the Assets on trust for Members of the Scheme subject to the provisions of the Constitution and the Law.

### **2.3 Manager to act as responsible entity of the Scheme**

**[Not altered but reproduced]**

The appointment of the Manager as manager of the Scheme is hereby confirmed and the Manager agrees to manager the Scheme upon and subject to the terms and conditions contained in the Constitution.

#### **2.4 Manager to establish Scheme**

**[Not altered but reproduced]**

The Manager shall, on the execution of the Constitution, lodge and hold the sum of one hundred dollars (\$100) to establish and constitute the Scheme. The Manager may, from time to time, cause or cause to be received more cash by way of addition to the Scheme to be held upon the trusts of the Constitution.

#### **2.5 Interests**

The beneficial interest in the Scheme shall be divided into Interests.

#### **2.6 Different Classes of Interest**

The Manager may issue Interests or classes of Interests with special rights or restrictions and those rights and restrictions prevail over any inconsistent provision of this Constitution. The rights or restrictions of a particular Interest or class of Interest shall be disclosed in any disclosure document offering investors the opportunity to invest in the Scheme.

#### **2.7 Creation of Additional Interests**

As and when an addition is made to the Scheme pursuant to this Constitution, additional Interests equal in number to the number computed by dividing the amount of Cash so added by the relevant Issue Price shall be created. The Manager may, instead of Cash, accept Authorised Investments as consideration for the issue of Interests in the Scheme provided that the Manager shall be satisfied as to the Value of such Authorised Investments and the number of Interests to be issued in respect thereof shall be the Value of such Authorised Investments divided by the relevant Issue Price at the date of issue of the Interests.

#### **2.8 Fractional Interests**

The Manager may at its discretion create a fractional Interest in 100 parts for an amount less than a whole dollar notwithstanding any other provision of this Constitution, the expression 'Interest' shall, where the context will allow, be deemed to include such a fractional Interest and such fractional Interest shall carry with it the rights and obligations which attach to a whole Interest and limited to the proportion of those rights and obligation which the number of 100ths in such fractional Interests bears to 1. A fractional Interest may also be created by the redemption of part of a whole Interest.

#### **2.9 Nature of Beneficial Interest**

A Member shall be entitled as herein provided or as provided by the Law to a beneficial interest in the Scheme but such interest shall not entitle the Member other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

#### **2.10 Minimum Investment Amounts and Holdings**

The Manager may at any time determine minimum amounts which may be invested and accepted as Application Moneys in the Scheme including any minimum holding of Interests in the Scheme.

#### **2.11 Binding Effect of Constitution**

This Constitution operates as a deed and is binding on the Manager and each Member and all persons claiming through them as if they were parties to this Constitution, and each Applicant by signing the Application, acknowledges being so bound.

## 2.12 Subordinated Interests

The Manager may pursuant to clause 2.6, issue Subordinated Interests to itself or any other person, provided that person is a Wholesale Client. The rights and restrictions of Subordinated Interests are:

- (a) The holder of a Subordinated Interest will have the same rights to vote at meetings of Members as the holders of Interests.
- (b) The holder of a Subordinated Interest has no entitlement to participate in any Income Warranty.
- (c) The holder of a Subordinated Interest has the right to receive the Distribution Surplus to be shared between the holders of Subordinated Interests in proportion to the number of Subordinated Interests they hold when the Distribution Surplus is distributed in accordance with clause 8.5.
- (d) The holders of Subordinated Interests must maintain the Minimum Investment Amount.
- (e) Subordinated Interests cannot be issued at an Issue Price which is less than the current Issue Price for Interests which are not Subordinated Interests.
- (f) Subject to paragraph (d) above, the redemption of a Subordinated Interest can only occur:
  - (i) with the consent of the Manager; and
  - (ii) all valid Withdrawal Request Forms have been processed and paid at a Redemption Price of not less than \$1.00 per Interest; and
  - (iii) provided the redemption does not breach any existing Facility Agreement;
  - (iv) there being retained sufficient surplus in the Scheme to meet any Income Warranty for the current month; and
  - (v) the Manager has a reasonable belief that:
    - (A) any Income Warranty; and
    - (B) any Benchmark Return,
    - (C) will continue to be met.
- (g) In the event the Manager is removed as responsible entity of the Scheme (other than with its consent) all Subordinated Interests will (subject to any existing Facility Agreement) on its removal convert to Access Investment Interests in the manner provided in clause 2.13.

## 2.13 Conversion of Subordinated Interests to Access Investment Interests

Where Subordinated Interests are converted to Access Investment Interests the following formula applies:

$$A = B \times (C/D)$$

- (a) Where:
- (b) A is the number of Access Investment Interests to which the Subordinated Interests are converted.
- (c) B is the number of Subordinated Interests held by the Subordinated Interests holder.
- (d) C is the Current Interest Value of the Subordinated Interests.
- (e) D is the Current Interest Value of Access Investment Interests.

### **3 APPLICATION PROCEDURES**

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#### **3.1 Offer**

The Manager may, in accordance with the provisions of the Law and this Constitution, invite investment in the Scheme and issue a Prospectus in relation to such an invitation.

#### **3.2 Applications**

A person who wishes to invest in the Scheme must make an Application in the manner specified in the Prospectus and pay the Issue Price associated with the Application Money payable.

#### **3.3 Application Account**

Unless otherwise required by the Law, the Manager must establish and maintain a Bank account in the name of the Manager to be designated the Application Account for the Scheme. The Application Account must be established and operated in accordance with the requirements of the Law.

#### **3.4 Application Money to be paid to Manager**

The Manager must, in each Prospectus and other representations relating to the Scheme, direct how all cheques and other payment orders in respect of Applications are to be drawn on account of the Scheme.

#### **3.5 Application Money with completed Application**

Where the Manager receives Application Money with a completed Application relating to a current Prospectus, the Manager must pay the Application Money into the Application Account as soon as practicable after its receipt, but no later than the close of business on the next Business Day after the day of receipt.

#### **3.6 Application Money without completed Application**

Where the Manager receives Application Money that is not accompanied by a completed Application relating to a current Prospectus it will, as soon as practicable, return the Application Money to the Applicant or:

- (a) attempt to obtain the Application from the Applicant;
- (b) pay the Application Money into the Application Account; and
- (c) if interest accrues while the Application Money is held in the Application Account, ask the Applicant, in writing, whether the Applicant wants the interest to be dealt with as additional Application Money or to be paid to the Applicant.

#### **3.7 Dealing with Application Money**

Should the Manager pay the Application Money into the Application Account under clause 3.6, the Manager will:

- (a) hold the Application Money on trust for the Applicant, until the Application is received; and
- (b) If the Application is received by the Manager within 30 days after the Application Money is received:
  - (i) apply the Application Money to the Scheme Accounts as soon as practicable after receiving the Application; and
  - (ii) deal with any interest accrued while the Application Money was held by the Manager in the Application Account in the manner disclosed in the Prospectus; and
- (c) if the Application has not been received by the Manager within 30 days after the Application Money was received, return the Application Money and interest (if any) to the Applicant as soon as practicable.

### **3.8 Manager's discretion**

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within a further 10 Business Days after the notice of rejection is given, refund to the Applicant the Application Money.

### **3.9 Manager may withdraw Prospectus**

The Manager may in its sole discretion determine at any time to withdraw a Prospectus. The Manager within 5 Business Days after the notice to withdraw the Prospectus is given, repay to all Applicants all Application Money paid pursuant to that Prospectus and held in the Application Account. Any interest that has accrued on Application Money in the Application Account shall be dealt with as disclosed in the Prospectus.

### **3.10 Manager to Confirm Acceptance**

- (a) Once the Application is accepted the Manager must enter the Applicant on the Register as a Member.
- (b) The Manager must transfer the Application Money of the Member to the Scheme Accounts.

### **3.11 Issue Price**

The issue price of an Interest shall be at the Issue Price and initially for each Interest shall be one dollar (\$1.00) of Application Money.

### **3.12 Certificates**

The Manager

- (a) may issue to each Member a Certificate as evidence of the Members' investment in the Scheme; and
- (b) may cancel existing Certificates and reissue new Certificates where the Manager has been supplied with evidence to the satisfaction of the Manager that the existing Certificate has been lost, or stolen.

### **3.13 Form of Certificate**

The Certificate is to be in the form as determined by the Manager.

### **3.14 Joint Members**

In the case of joint Members, only the person whose name appears first in the Register is entitled to a Certificate relating to that Members Interest.

### **3.15 Replacement Certificates**

Replacement Certificates may be issued in the circumstances and subject to such conditions as determined by the Manager.

### **3.16 Issue Price Adjustment**

Where the Manager calculates the Issue Price of an Interest, and the Issue Price is less than \$1.00 per Interest the following will apply:

- A = the Current Value of the Scheme
- B = the total number of Issued Interests
- C = the total number of Subordinated Issued Interests
- $A/(B-C) = D$
- $D - \$1.00 = E$

If E is zero or a negative number then the Issue Price of Interests which are not Subordinated Interests will be D and the Issue Price of Subordinated Interests will also be D.

If E is a positive number then the Issue Price of Interests which are not Subordinated Interests will equal \$1.00 and the Issue Price of a Subordinated Interest will also be \$1.00.

## **4 RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER**

### **4.1 Exercise of powers of the Manager**

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purposes of the Scheme and on security of the relevant Assets.

### **4.2 Power to Appoint Agent (Section 601FB(2))**

- (a) The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Scheme.
- (b) For the purpose of determining whether:
  - (i) there is a liability to the Members; or
  - (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

### **4.3 Authority for Agent (Section 601FB(3))**

An agent appointed, or a person otherwise engaged, by:

- (a) the agent or person referred to in clause 4.2; or
- (b) a person who is taken under this clause to be an agent of the Manager;

to do anything that the Manager is authorised to do in connection with the Scheme is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 4.2.

### **4.4 Liability of Agent (Section 601FB(4))**

If:

- (a) an agent holds any Assets on behalf of the Manager; and
- (b) the agent is liable to indemnify the Manager against any loss or damage that:
  - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and
  - (ii) relates to a failure by the Manager to perform its duties in relation to the Scheme;

then any amount recovered under the indemnity forms part of the Assets.

### **4.5 Duties of Manager (Section 601FC)**

In exercising its powers and carrying out its duties, the Manager must:

- (a) act honestly;

- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the Manager's own interests, give priority to the Members' interests;
- (d) treat the Members of the same class equally and Members of different classes fairly;
- (e) not make use of information acquired through being the Manager in order to:
  - (i) gain an improper advantage for itself or another person; or
  - (ii) cause detriment to the Members of the Scheme;
- (f) ensure that the Constitution meets the requirements of sections 601GA and 601GB of the Law;
- (g) ensure that the Compliance Plan meets the requirements of section 601HA of the Law;
- (h) comply with the Compliance Plan;
- (i) ensure that the Assets are:
  - (i) clearly identified as Assets; and
  - (ii) held separately from property of the Manager, the assets of other Schemes established under the Constitution and the property of any other managed investments scheme;
- (j) ensure that all payments out of the Assets are made in accordance with the Constitution and the Law;
- (k) report to the Commission any breach of the law by the Manager that:
  - (i) relates to the Scheme; and
  - (ii) has had, or is likely to have, a materially adverse effect on the interests of Members;

as soon as practicable after the Manager becomes aware of the breach; and
- (l) carry out or comply with any other duty, not inconsistent with the Law, that is conferred on the Manager by the Constitution.

## **5 DUTIES OF OFFICERS AND EMPLOYEES OF MANAGER**

### **5.1 Duties of Officers of the Manager (Section 601FD(1))**

An Officer of the Manager must:

- (a) act honestly;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Officer's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the interests of the Manager, give priority to the Members' interests;
- (d) not make use of information acquired through being an Officer of the Manager in order to:
  - (i) gain an improper advantage for the Officer or another person; or
  - (ii) cause detriment to the Members;
- (e) not make improper use of their position as an Officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members; and

- (f) take all steps that a reasonable person would take, if they were in the Officer's position, to ensure that the Manager complies with:
  - (i) the Law;
  - (ii) any conditions imposed by the Manager's licence;
  - (iii) the Constitution; and
  - (iv) the Compliance Plan.

## **5.2 Duties of Employees of the Manager (Section 601FE(1))**

An employee of the Manager must not:

- (a) make use of information acquired through being an employee of the Manager in order to:
  - (i) gain an improper advantage for the employee or another person; or
  - (ii) cause detriment to Members; or
- (b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members.

## **6 INDEMNITIES AND REIMBURSEMENTS OF EXPENSES**

### **6.1 Indemnity**

To the extent permitted by statute the Manager is indemnified out of the Assets for all debts, liabilities, damages, costs, Taxes, charges, expenses and outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, Taxes, charges, expenses or outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

### **6.2 Limitation of liability**

Except in the case of a failure to exercise care and diligence, the Manager will not to the extent permitted by statute be liable to account to nor to indemnify the Scheme, a Member or person claiming under or on behalf of a Member, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise); or
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Scheme, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made; or
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager; or
- (d) anything done in good faith by the Manager in respect of an Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate.

### **6.3 Further limitation of liability of the Manager**

Except in the case of the Manager's failure to exercise care and diligence, the Manager is not to the extent permitted by statute liable to Members to any extent greater than the extent of the

Assets vested in the Manager or received and/or held by it in accordance with the provisions of this Constitution.

#### **6.4 Transactions Involving the Scheme**

Subject to the Law and the Manager's duties to Members, the Manager is entitled, in any capacity other than as manager of the Scheme, to contract with a Member, the Scheme or any Authorised Investment or any property proposed to be acquired as an Asset, without any liability to account to the Members only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution; and
- (b) the Manager acts in the transaction with good faith to the Members.

#### **6.5 Further Indemnity**

If the Manager acquires an Asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of the Scheme which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets in respect of that liability.

#### **6.6 General Compliance Related Party Transactions**

- (a) The Manager must comply with part 5C.7 of the Law in respect of all Related Party transactions. In particular the Manager must not, unless permitted by the Law, give a financial benefit:
  - (i) to itself, or to a Related Party, out of the Assets; or
  - (ii) that could diminish or endanger the Assets;
- (b) Paragraph (a) does not prevent the Manager from paying itself fees, and exercising rights to an indemnity, in this Constitution and under section 601GA(2) of the Law and the law.

#### **6.7 Dealings by the Manager**

Nothing in this Constitution prevents the Manager or any person associated with the Manager from being a Member.

### **7 INVESTMENT**

#### **7.1 Investment Management**

It is the role of the Manager to seek and invest the funds of the Scheme in Mortgage Investments.

#### **7.2 Investment of Assets in another managed investment scheme (Section 601FC(4))** **[Deleted and not replaced]**

#### **7.3 Investment Oversight**

The Manager shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery action under Mortgage Investments or other securities held in respect of Authorised Investments made in order to recover or maximise recovery of the capital and any unpaid income component of any Authorised Investment.

#### **7.4 Income Warranty**

- (a) The Manager may in a Prospectus or other offer document make provision for or representations as to the payment to Members of a minimum rate of distribution to be received by Members on their respective investments notwithstanding the percentage rates of interest payable under Mortgage Investments or Authorised Investments which

shall comprise Assets of the Scheme (in this and other clauses of the Deed to be called an Income Warranty').

- (b) The terms of any such Income Warranty may vary for each Prospectus or other offer document issued by the Manager on application to Applicants having regard to terms made by the Manager and based on the Manager's estimates of the Scheme's income, liabilities and expenses to be taken into account in estimating the likely return to Members and Applicants for periods (if any) nominated by the Manager in each prospectus or other offer document issued by it. The Manager may determine that the percentage rate of any Income Warranty be specified or provided for in any Application under a Prospectus or offer document issued by it or may leave such rate blank in any Application, with the Manager reserving the right to complete and/or accept an Application dependent upon the prevailing percentage rate of Income Warranty determined by and acceptable to the Manager at the time. Any Income Warranty given shall be deemed to be given by the Manager personally and shall not be binding on nor affect the Scheme notwithstanding that references to an Income Warranty may be included in an Application.

#### **7.5 Amending the Income Warranty**

The Manager may at any time amend the Income Warranty. In such circumstances the amendments must be notified to the Applicants before or at the time they complete their Application.

### **8 INCOME OF THE SCHEME**

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#### **8.1 Manager to collect Income**

The Manager will collect, receive and get in the Income of the Authorised Investments and will pay it into the Scheme Accounts. The Manager will make all payments relating to the Scheme from the Scheme Accounts.

#### **8.2 Decision of Manager final**

The decision of the Manager in consultation with the Auditor as to whether any amount to be distributed to Members is Income or capital shall be final.

#### **8.3 Distribution to Members**

The Manager shall distribute to the Members (excluding the holders of Subordinated Interests) the Distribution Amount within 14 days of the end of the Distribution Period for that Member.

#### **8.4 Distribution Period**

The Distribution Period for each Member (excluding the holders of Subordinated Interests) shall be:

- (a) quarterly, monthly, half yearly, or yearly as disclosed by the Manager in the Prospectus; or
- (b) if the Manager so provides, as agreed between the Member and the Manager at the time the Members Application is accepted.

#### **8.5 Distribution Surplus**

Following the payment in each Distribution Period to each Member (excluding the holders of Subordinated Interests), their Distribution Amount, any remaining surplus Income of the Scheme shall be paid in the following order of priority and subject to the provisions of clauses 2.12 and 21.5:

- (a) in payment of Scheme expenses;
- (b) payment to each Member a distribution up to their particular Benchmark Return;

- (c) in payment of the Manager's management fee; then the balance
- (d) as a distribution to the holders of Subordinated Interests as between those Members in proportion to the number of Subordinated Interests they hold.

#### **8.6 Manager to keep separate accounts**

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Member.

#### **8.7 Reinvestment of income entitlement**

- (a) The Manager may invite Members in the Scheme to reinvest any or all of their Distribution Amount by way of application for additional Interests in the Scheme. The terms of any such invitation will be determined by the Manager and may, amongst other things, provide that unless a Member otherwise directs the Manager, that Member will be deemed to have elected to reinvest all or part of their Distribution Amount. Any invitation may be withdrawn or varied by the Manager.
- (b) Interests so applied for will be deemed to have been issued on the first day of the Distribution Period immediately following the Distribution Period in respect of which the Distribution Amount has accrued or such other date determined by the Manager.

#### **8.8 Members presently entitled to Distributable Income**

In accordance with clause 8.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period.

### **9 TERMINATION OF THE SCHEME**

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#### **9.1 Termination of the Scheme**

**[Not altered but reproduced]**

Subject to clause 9.2, the Scheme will terminate 80 years from the Commencement Date unless otherwise specified in the Prospectus for the Scheme.

#### **9.2 Defined Event of Winding Up**

The Manager must wind up the Scheme or cause the Scheme to be wound up on the occurrence of any one of the following circumstances:

- (a) the Scheme is without a Manager for whatever reason;
- (b) the Manager uses the mechanism provided for in Section 601NC of the Law;
- (c) the Members decide in a meeting called in accordance with this Constitution and the Law to wind up the Scheme;
- (d) the Scheme comes to the end of its term (as set out in clause 9.1);
- (e) any of the circumstances set out in Section 601NE of the Law apply such that the Manager is required to wind up the Scheme; or
- (f) a court orders the Scheme to be wound up pursuant to Section 601ND of the Law.

#### **9.3 Procedure for Winding Up**

- (a) Unless otherwise required by the Law, the Manager is responsible for winding up the Scheme.
- (b) The Manager must convert to money all Assets, deduct all proper costs and then distribute the money to each Member in proportion to the Members Interests in the Scheme. The Manager may make interim distributions during the winding up process.

- (c) The Manager must proceed with the winding up efficiently, diligently and without undue delay. The Manager must complete the winding up process within such time frame as it considers is available to do so, whilst complying with its duties under this Constitution.
- (d) The Manager may retain from the proceeds of winding up:
  - (i) sufficient funds to meet future obligations which the Manager reasonably believes will fall due after a distribution is made to Members; and
  - (ii) to pay its own remuneration expenses for work to be done following the realisation of the Assets.
- (e) During the winding up of the Scheme, the Manager may terminate any agreements or arrangements it has entered into with Members which relate to the Scheme. The Manager must give notice to the Members of the termination of those agreements or arrangements.
- (f) Once the Manager believes the winding up is complete, the Manager must engage a registered company auditor to audit the final accounts of the Scheme. The Manager must send a copy of any report made by the auditor to Members within 30 days after the Manager receives the report from the auditor.
- (g) The operation of this clause is subject to the priority obligations in clause 9.4.

#### **9.4 Priority on a winding up**

In the winding up of the Scheme the realisation of the assets of the Scheme will be applied in the following priority:

- (a) must apply the assets of the Scheme, or the proceeds of their realisation, to pay any Liabilities (excluding Interest Liabilities); then
- (b) pay to the holders of Interests (excluding the holders of Subordinated Interests) the sum equivalent to their Issue Price for their Interests;
- (c) pay to the holders of Subordinated Interests the sum equivalent to their Issue Price for their Subordinated Interests; and thereafter
- (d) distribute the remaining assets or the net proceeds to all Members in proportion to the number of Interests of which they are the registered holder on the date of termination of the Scheme.

#### **9.5 Limitation of liabilities**

A Member is not liable to contribute towards the debts or liabilities of the Manager and is not liable to indemnify the Manager or any creditor or either of them in the event of any deficiency of the Scheme. The only rights, if any, of indemnity of the Manager and their respective creditors shall be limited to the Assets. The limitation of liability of Members set out in this clause 9.5 also apply to any liability which is incurred by the Manager as a result of any directions or requests of the Members.

## **10 TRANSFER AND TRANSMISSION OF MEMBERS INTERESTS**

### **10.1 General principles when dealing with Members' Interests**

- (a) A Member may transfer their Interests only in accordance with the provisions of this Constitution and, in particular:
  - (i) the transferee must agree to be bound by the provisions of this Constitution; and
  - (ii) a stamped transfer of the Interests in the Scheme must be delivered to the Manager together with the Certificate or Certificates in respect of the Interests to be transferred.

- (b) The Manager will not be required to effect any transaction or dealing in any Interest on behalf of or for the benefit of or at the request of any Member unless the Member has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Member concerned and retain the amount so paid out of any moneys to which the Member may be, or become, entitled.
- (c) The Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 12.6.
- (d) Every instrument of transfer of an Interest which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.
- (e) Where the Manager refuses to register any instrument of transfer, within 2 Months after the date on which the instrument was deposited with the Manager, the Manager will give notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within 2 months of the giving of the notice.
- (f) The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (g) Upon the registration of a transfer of any Interest, the Manager will within one Month after the date of such registration issue to the transferee or transmittee written confirmation of the transfer or transmission.

## **10.2 Form of transfer**

The transfer of an Interest shall be form in the nominated by the Manager. The form will have regard to the need for the transferee to be bound to this Constitution and any other arrangements which go to the integrity of the Scheme.

## **10.3 Transmission**

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Member the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Interests registered in the deceased's name;
- (b) any person becoming entitled to any Interests in consequence of the death or bankruptcy of a Member may upon:
  - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Interests as the Manager deems sufficient;
  - (ii) In the case of the death of the Member, producing to the Manager evidence of payment of any duties the Manager may require; and
  - (iii) delivering up to the Manager for cancellation the Certificate for the Interests, be registered as the holder of the Interests and the Manager shall cancel the existing Certificate for Interests and issue a new Certificate for Interests in their name;
- (c) any person becoming entitled to any Interests because of the death or bankruptcy of a Member may give a good and sufficient discharge to the Manager for any money paid to

them but are not entitled to receive notices of or to attend or vote at any meetings of Members until they have become registered as a Member in respect of such Interests.

## **11 WITHDRAWAL**

### **11.1 Obligation to redeem**

- (a) The Withdrawal Date applicable to each Member who invests for a fixed 12 month investment term will be each annual anniversary of the date that Member's Application was accepted by the Manager and Interests are issued. For the avoidance of doubt, if a Member's Application is accepted by the Manager and Interests are issued on 2 December 1999, then the first Withdrawal Date for those funds invested by that Member will be 2 December 2000 or if this is not a Business Day, the next Business Day thereafter. If a Member does not lodge a Withdrawal Request Form within the time prescribed by this clause 11, then the Member's next Withdrawal Date will be 2 December 2001 or if this is not a Business Day, the next Business Day thereafter.
- (b) A Member or a Member's duly authorised agent approved by the Manager, must at least 30 days before the Withdrawal Date give the Manager a Withdrawal Request Form specifying the number of Interests to be redeemed and such notice is to be accompanied by the relevant Certificates (if any).
- (c) Subject to the following provisions of this clause 11 and the existence of a Delay Event, on receipt of a Withdrawal Request Form and Certificates (if any), the Manager must within 180 days of the Withdrawal Date redeem the required Interests out of the Scheme at the Redemption Price applicable on the date the Members Interests are redeemed by the Manager for that Member. The date the Members Interests are redeemed by the Manager pursuant to this clause is the Redemption Date for that Member.
- (d) Subject to the Manager's rights under clause 11.7, the days and times specified in clauses 11.1 and 11.2 may be varied upon not less than 60 days' notice to Members.
- (e) Notwithstanding this clause 11.1, the Manager may at its discretion allow the Member to withdraw from the Scheme all or part of the Member's funds at any time, in accordance with clause 11.18.

### **11.2 Access and 7 day call Investment Interests**

- (a) Pursuant to clause 2.6 the Manager has created a separate class of Interests referred to as the Access Investment Interests and the 7 day call Investment Interests. Members who hold Interests of these classes, may lodge a Withdrawal Request Form with the Manager at any time they wish their Interest to be redeemed by the Manager on behalf of the Scheme.
- (b) From the date of this amendment 7 day call Investment Interests will thereafter be called and also referred to in this Constitution, as Access Investment Interests. The redemption provisions applying to Access Investment Interests apply equally to 7 day call Investment Interests.
- (c) Subject to the following provisions of this clause 11.2 and the existence of a Delay Event the Manager will generally redeem an Access Investment Interest within 7 days of receipt of that Member's Withdrawal Request Form with respect to that Access Investment Interest. However, the Manager has up to 180 days from receipt of the Withdrawal Request Form, to redeem that Access Investment Interest and pay the Redemption Amount to the holder of the Access Investment Interest.
- (d) The date upon which the Manager redeems the Access Investment Interest in accordance with clause 11.2, will be the Redemption Date for that Access Investment Interests.

### **11.3 Extension of Redemption Date**

- (a) Notwithstanding clauses 11.1(c) and 11.2, in the circumstances of a Delay Event the Manager must redeem Interests within 360 days of receiving a valid Withdrawal Request Form. Nothing in this clause 11.3 prohibits the Manager from redeeming Interests within these maximum timeframes.
- (b) The Manager is not required to process a redemption request where:
  - (i) the provisions of this Constitution relating to appropriate evidence of title have not been satisfied; or
  - (ii) the redemption would cause the Members Interests to fall below any minimum investment balance, as disclosed in the Prospectus.
- (c) The date the Manager redeems the Members Interests as provided in this clause 11.3 is the Redemption Date.
- (d) In satisfying redemption requests the Manager must treat all Members of the same class equally and as between classes fairly. Where the Manager holds more than one valid Withdrawal Request Form of the same class, it shall process them in order of receipt.

### **11.4 Suspension by Manager**

The Manager may suspend the redemption of Interests for such period as it determines where it is impractical to calculate the Redemption Price due to:

- (a) the closure of a securities exchange or trading restrictions on a securities exchange;
- (b) an emergency or other state of affairs;
- (c) the declaration of a moratorium in a country where the Scheme has investments;
- (d) a closure of or restrictions on trading in the relevant foreign exchange market; or
- (e) the realisation of Investments not being able to be effected at prices which would be realised if investments were realised in an orderly fashion over a reasonable period in a stable market.

No suspension may exceed 30 days unless a longer period is permitted by the Manager having regard to the circumstances. All outstanding redemptions with Redemption Dates which fall within that period of suspension and any Withdrawal Request Form received while the redemption of Interests is suspended, shall be reactivated with effect from the first Business Day after the suspension ceases.

### **11.5 Other suspension of redemption obligation**

The Manager is not obliged to cause the redemption of Interests in the Scheme in any of the following circumstances:

- (a) the person making the request holds more than the Minimum Redemption Amount in the Scheme and the request relates to less than the Minimum Redemption Amount; or
- (b) carrying out the redemption will result in the person making the request holding less than the Minimum Redemption Amount in the Scheme; or
- (c) the request is made:
  - (i) after any notice convening a meeting of Members to vote on whether to wind up the Scheme has been sent by the Manager and before those eligible to vote have so voted; or
  - (ii) while the Scheme is being lawfully wound up, whether pursuant to a resolution to wind up the Scheme or in accordance with the Constitution or otherwise;

The Manager will remain entitled in its absolute discretion to or cause the redemption of Interests in accordance with clause 11.1 in the above circumstances.

#### **11.6 Staggering of Redemption Dates**

Despite any provision of this Constitution, the Manager may determine more than one Redemption Date for Interests to be redeemed pursuant to a Withdrawal Request Form and such Interests will be redeemed over those days in such proportions as the Manager determines, provided that all such Interests are redeemed within the time specified in clause 11.1.

#### **11.7 Funding of redemption**

To fund the redemption of Interests out of the Scheme, the Manager may apply or realise part of the Assets, and/or raise or borrow money, either unsecured or secured against Assets.

#### **11.8 Time for Payment of Redemption Amount**

The Manager will pay or cause to be paid to the Member the Redemption Amount in respect of any Interests within 90 days of the Redemption Date.

#### **11.9 Resale and redemption of Interests by Manager**

Where the Manager holds Interests for its own benefit, it may redeem those Interests out of the Scheme. This clause 11 will apply, with the necessary changes, to that redemption.

#### **11.10 Cancellation of Interests**

Interests which have been redeemed out of the Scheme will be cancelled and the Manager will record the cancellation in the Register.

#### **11.11 Transfer of specific assets**

The Manager may determine that the Redemption Amount will be satisfied wholly or in part by the transfer of investments of the Scheme at their Market Value. Expenses incurred in respect of the transfer must be paid by the Member.

#### **11.12 Compulsory redemption of small holdings**

If the Redemption Price of all Interests in the Scheme held by a Member is less than the Minimum Redemption Amount, the Manager may compulsorily redeem those Interests.

#### **11.13 Components of Redemption Price and payment of accrued distributions**

- (a) Unless the Manager otherwise notifies a Member whose Interests are redeemed, the Redemption Price paid to that Member will comprise capital only. The Manager may notify a Member that the Redemption Price comprises part capital and part Income. Where the Redemption Price paid to a Member comprises Income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the Income component and the Manager must notify the Member of the Income component of the Redemption Price paid to them. This notice may be given at the time of redemption but must in any case be given within 3 months of the end of the Financial Year of the Scheme in which the redemption occurs.
- (b) Where an Interest is redeemed after a right to a distribution, whether income or capital, has accrued in respect of that Interest, that distribution may be paid to the holder of the Interest at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Interests.

#### **11.14 No required disposal**

A Member is not required to dispose of its Interests except as otherwise provided in this Constitution and the Corporations Law.

#### **11.15 Early Redemption**

Notwithstanding anything else contained in this clause 11:

- (a) A Member shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.

- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the Redemption Date for the Member will be the date nominated by the Manager.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clause 11.11.15(a) or 11.15(b). In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed in the Prospectus. The Redemption Date for the Member in those circumstances shall be the date the Manager receives from the Member the Withdrawal Request Form.

#### 11.16 Liquidity Protection Rules

Notwithstanding any provision in this clause 11, the Manager may withhold or suspend payment to a Member or Members of a Redemption Amount or Redemption Amounts payable and/or withhold or suspend for further processing, any Withdrawal Request Forms then on hand if:

- (a) The Manager in any 30 day period receives Withdrawal Request Forms from a Member or Members where the Redemption Amount or Redemption Amounts is equal to or greater than 5% of the total value of the Assets of the Scheme; or
- (b) During a period of 10 consecutive days falling within a 90 day period, the Scheme's cash reserves are less than 5% of the total value of the Assets of the Scheme. In these circumstances, the Manager may refuse to accept any new Withdrawal Request Forms and may refuse to accept any new Applications for such period not exceeding 12 months as may be required to realise, in an orderly manner, the Assets of the Scheme.

#### 11.17 Additional Investments

- (a) Notwithstanding any other provision of clause 11, the Manager may (at its discretion) allow a Member to invest additional amounts to their 12 month investment for up to 30 days from the date their initial investment is accepted by the Manager and Interests issued. Where this occurs the Redemption Date for both the Initial Interest and subsequent Interests will be the 12 month anniversary of the issue of the Initial Interests. For example, the Member invests \$20,000 on 1 February 2006 and acquired 20,000 Interests (assuming the Issue Price is \$1.00 per Interest), and the Member (with the consent of the Manager) contributes a further \$15,000 and is issued 15,000 Interests on 25 February 2006 (assuming the Issue Price is \$1.00 per Interest). In this circumstance the Redemption Date (assuming the Member has lodged a valid Redemption Withdrawal Request Form) of all the Members Interest is 31 January 2007.
- (b) The Manager (at its discretion) may also allow Members to add to their 12 month investment during the 30 days prior to their Redemption Date. In this instance such an additional investment will constitute the early termination of their initial investment with both their initial and subsequent investments being deemed to be reinvested for a further full 12 months. For example, the Member invests \$20,000 on 1 February 2006 and is issued 20,000 Interests (assuming the Issue Price is \$1.00 per Interest). On 25 January 2007 the Member advises the manager that the Member wishes to invest an additional \$15,000 in the Scheme as an additional investment to their original investment and not as a new investment. Then with the consent of the Manager, the original Interests of the Member are redeemed by the Manager on the Redemption Date nominated by the Manager (which for the purpose of this example is 25 January 2007), and (assuming the then Redemption Price and Issue Price of Interests is \$1.00 per Interest) 35,000 new Interest are issued by the Manager on 25 January 2007 with a new Redemption Date of 24 January 2008.

- (c) Notwithstanding any other provision in this Constitution, the Manager in exercising its discretion in this clause 11 or as otherwise contained in the Constitution:
  - (i) must do so in accordance with its obligations under the Corporations Act 2001; and
  - (ii) nothing in any way obliges or requires the Manager to exercise its discretion in favour of the Member or redeem the Members Interests before their original Redemption Date.

#### 11.18 Early Redemption

Notwithstanding anything else contained in this clause 11:

- (a) A Member who invests pursuant to clause 11.1 shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.
- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clauses 11.1.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clauses 11.1 or 11.2. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clause 11.1.

#### 11.19 Redemption Price Adjustment

Where the Manager calculates the Redemption Price of an Interest, and the Redemption Price is less than \$1.00 per Interest the following will apply:

A = the Current Value of the Scheme

B = the total number of Issued Interests

C = the total number of Subordinated Issued Interests

$A/(B-C) = D$

$D - \$1.00 = E$

If E is zero or a negative number then the Redemption Price of Interests which are not Subordinated Interests will be D and the Redemption Price of Subordinated Interests will be nil.

If E is a positive number then the Redemption Price of Interests which are not Subordinated Interests will equal \$1.00 and the Redemption Price of Subordinated Interests will be H, calculated as:

$(B-C) \times \$1.00 = F$

$A - F = G$

$G / \text{total number of Subordinated Issued Interests} = H.$

## **12 REGISTERS**

### **12.1 Member Register**

The Manager will keep and maintain an up-to-date Register at the registered office or principal place of business of the Manager in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time considers appropriate.

### **12.2 Details on Register**

Subject to clause 12.3, there will be entered in the Register:

- (a) the names and addresses of the Members from time to time;
- (b) the number of Interests from time to time held by each Member;
- (c) the date on which the name of each Member was entered in the Register, and
- (d) the date on which any person ceased to be a Member.

### **12.3 Expunging Information**

The information relating to a Member (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Member ceased to be a Member.

### **12.4 Inspection of Register**

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Member or representative of a Member and the inspection relates to that part of the Register that contains particulars of the Member's Interest relevant to that person; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
  - (i) calling a meeting of Members;
  - (ii) notifying a Member of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution; or
  - (iii) any other purpose approved in writing by the Commission.

### **12.5 Copies of Register**

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager but shall not exceed \$2.50 per page.
- (b) Paragraph (a) does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by the Commission.

### **12.6 Closure of Register**

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

### **12.7 Change of Member Details**

Each Member will give the Manager notice of any change of name or address on the part of such Member and the Manager, upon receiving such notification, will alter the Register accordingly.

## **13 MEMBER MEETINGS (PART 2G.4)**

### **13.1 Managers Power to call Members Meeting (Section 252A)**

The Manager may call a meeting of the Members at any time.

### **13.2 Members power to call a meeting (Section 252B)**

- (a) The Manager must call and arrange to hold a meeting of the Members to consider and vote on a proposed special or extraordinary resolution on the request of:
  - (i) Members with at least 5% of the votes that may be cast on the resolution; or
  - (ii) at least 100 Members who are entitled to vote on the resolution.
- (b) The request by the Members must:
  - (i) be in writing; and
  - (ii) state any resolution to be proposed at the meeting; and
  - (iii) be signed by the Members proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Members making the request.
- (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Members if the wording of the request and statement (if any) is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) The Manager must call the meeting within 21 days after the request is given to it. The meeting must be held not later than 2 months after the request is given to the Manager.
- (g) The Manager must give to each of the Members a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Manager must distribute the copies in the same way in which it gives notice of the meeting.
- (h) The Manager does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (i) The Manager is responsible for the expenses of calling and holding the meeting and making the distribution. The Manager may meet those expenses from the Assets.

### **13.3 Failure of Manager to call meeting of the Members (Section 252C)**

- (a) Members with more than 50% of the votes carried by interests held by the Members who make a request under section 252B of the Law may call and arrange to hold a meeting of the Members and distribute the statement (if any) if the Manager does not do so within 21 days after the request is given to the Manager.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Members may be called by the Manager and information is distributed to Members by the Manager. The meeting must be held not later than 3 months after the request is given to the Manager.
- (c) To call the meeting the Members requesting the meeting may ask the Manager for a copy of the Register. The Manager must give the Members requesting the meeting the copy of the Register without charge.
- (d) The Manager must pay the reasonable expenses the Members incurred because the Manager failed to call and arrange to hold the meeting and to make the distribution (if any). The Manager must not pay or be reimbursed those expenses from the Assets.

#### **13.4 Calling of meetings of Members by Members (Section 252D)**

- (a) Members who hold interests carrying at least 5% of the votes that may be cast at a meeting of Members may call and arrange to hold a meeting of the Members to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Members may be called by the Manager.
- (c) The percentage of the votes carried by interests that Members hold is to be worked out as at the midnight before the meeting is called.

### **14 HOW TO CALL MEETINGS OF MEMBERS**

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#### **14.1 Notice of meetings (Section 252F)**

At least 21 days notice must be given of a meeting of Members.

#### **14.2 Notice of meetings of Members to Members, directors and auditors (Section 252G)**

- (a) Written notice of a meeting of Members must be given to:
  - (i) each Member entitled to vote at the meeting;
  - (ii) each director of the Manager;
  - (iii) the Auditor; and
  - (iv) the auditor of the Compliance Plan.
- (b) Notice to joint Members need only be given to the joint Member named first in the Register.
- (c) The Manager may give notice of the meeting to a Member:
  - (i) personally; or
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address (if any) nominated by the Member; or
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member.
- (d) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (e) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

#### **14.3 Auditors entitled to other communications (Section 252H)**

The Manager must give the Auditor and the auditor of the Compliance Plan all communications relating to the meeting that a Member is entitled to receive.

#### **14.4 Contents of notice of meetings of Members (Section 252J)**

A notice of a meeting of Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special or extraordinary resolution is to be proposed at the meeting, set out an intention to propose the special or extraordinary resolution and state the resolution; and
- (d) contain a statement setting out the following information:

- (i) that the Member has a right to appoint a proxy;
- (ii) that the proxy does not need to be a Member; and
- (iii) that if the Member appoints 2 proxies the Member may specify the proportion or number of votes the proxy is appointed to exercise.

#### **14.5 Notice of adjourned meetings (Section 252K)**

When a meeting is adjourned, new notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

### **15 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF MEMBERS**

#### **15.1 Members' resolutions (Section 252L)**

- (a) The following Members may give the Manager notice of a special or extraordinary resolution that they propose to move at a meeting of Members:
  - (i) Members with at least 5% of the votes that may be cast on the resolution: or
  - (ii) at least 100 Members who are entitled to vote at a meeting of Members.
- (b) The notice must:
  - (i) be in writing;
  - (ii) set out the wording of the proposed resolution; and
  - (iii) be signed by the Members giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Members have is to be worked out as at the midnight before the Members give the notice.

#### **15.2 Manager giving notice of Members' resolutions (Section 252M)**

- (a) If a Manager has been given notice of a special or extraordinary resolution under section 252L of the Law, the resolution is to be considered at the next meeting of Members that occurs more than 2 months after the notice is given.
- (b) The Manager must give all the Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Manager is responsible for the cost of giving Members notice of the resolution if the Manager receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Members notice of the resolution if the Manager does not receive the Members' notice in time to send it out with the notice of meeting. A resolution may be passed at a meeting of Members that the Manager is to meet the expenses out of the Assets.
- (e) The Manager need not give notice of the resolution:
  - (i) if it is more than 1,000 words long or defamatory; or
  - (ii) if the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

#### **15.3 Members' statements to be distributed (Section 252N)**

- (a) Members may request a Manager to give to all its Members a statement provided by the Members making the request about:

- (i) a resolution that is proposed to be moved at a meeting of Members; or
  - (ii) any other matter that may be properly considered at a meeting of Members.
- (b) The request must be made by:
  - (i) Members with at least 5% of the votes that may be cast on the resolution; or
  - (ii) at least 100 Members who are entitled to vote at the meeting.
- (c) The request must be:
  - (i) in writing; and
  - (ii) signed by the Members making the request; and
  - (iii) given to the Manager.
- (d) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) After receiving the request, the Manager must distribute to all the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Manager is responsible for the cost of making the distribution if the Manager receives the statement in time to send it out to Members with the notice of meeting.
- (h) The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not receive the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the Members that the Manager is to meet the expenses out of the Scheme's Assets.
- (i) The Manager need not comply with the request:
  - (i) If the statement is more than 1,000 words long or defamatory; or
  - (ii) if the Members making the request are responsible for the expenses of the distribution, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

## **16 HOLDING MEETINGS OF MEMBERS**

### **16.1 Time and place for meetings of Members (Section 252P)**

A meeting of Members must be held at a reasonable time and place.

### **16.2 Technology (Section 252Q)**

A Manager may hold a meeting of the Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **16.3 Quorum (Section 252R)**

- (a) The quorum for a meeting of Members is 2 Members and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Member has appointed more than one proxy or representative, these proxies or representatives only count as one person. If an individual is attending both as a Member and as a proxy or body corporate representative they shall all only be counted as one individual.

- (c) A meeting of Members that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Manager specifies. If the Manager does not specify one (1) or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified—the same day in the next week; and
  - (ii) if the time is not specified—the same time; and
  - (iii) if the place is not specified—the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

#### **16.4 Chairing meetings of Members (Section 252S)**

- (a) The Manager may, in writing, appoint an individual to chair a meeting called under section 252A or 252B of the Law.
- (b) The Members present at a meeting called under section 252A or 252B of the Law must elect a Member present to chair the meeting (or part of it) if:
  - (i) a chairperson has not previously been appointed to chair the meeting; or
  - (ii) a previously appointed chairperson is not available, or declines to act for the meeting (or part of the meeting).
- (c) The Members present at a meeting called under sections 252C, 252D or 252E of the Law must elect a Member present to chair the meeting.

#### **16.5 Auditors' right to be heard at meetings of Members (Section 252T)**

- (a) The Auditor and the auditor of the Compliance Plan are entitled to attend any meeting of the Members.
- (b) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Members.

#### **16.6 Adjourned meetings (Section 252U)**

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **17 PROXIES AND BODY CORPORATE REPRESENTATIVES**

#### **17.1 Who can appoint a proxy (Section 252V)**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Member may appoint one or 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (d) Fractions of votes resulting from the application of paragraphs (b) and (c) are to be disregarded.

## **17.2 Rights of proxies (Section 252W)**

- (a) A proxy appointed to attend and vote for a Member has the same rights as the Member:
  - (i) to speak at the meeting; and
  - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on a show of hands.
- (c) A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

## **17.3 Manager sending appointment forms or lists of proxies must send to all Members (Section 252X)**

If the Manager sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list—the Manager must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the Manager must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

## **17.4 Appointing a proxy (Section 252Y)**

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
  - (i) the Member's name and address;
  - (ii) the Scheme's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph (a) is not strictly complied with, provided in the reasonable opinion of the Manager the intentions of the Member is clear.
- (c) An undated appointment is taken to have been dated on the day it is given to the Manager.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
  - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
  - (iii) if the proxy is the chairperson—the proxy must vote on a poll, and must vote that way; and
  - (iv) if the proxy is not the chairperson—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) The appointment of a proxy does not have to be witnessed.
- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

#### **17.5 Proxy documents (Section 252Z)**

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Manager at least 48 hours before the meeting:
  - (i) the proxy's appointment; and
  - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Manager receives an appointment authority when it is received at any of the following:
  - (i) the Manager's registered office;
  - (ii) a fax number at the Manager's registered office; or
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if:
  - (i) the Manager receives either or both the appointment or authority at a fax number or electronic address; and
  - (ii) a requirement (if any) in the notice of meeting that:
    - (A) the transmission be verified in a way specified in the notice; or
    - (B) the proxy produce the appointment and authority (if any) at the meeting;

is not complied with.

#### **17.6 Validity of proxy vote (Section 253A)**

- (a) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies; or
  - (ii) the Member is mentally incapacitated; or
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
  - (v) the Member transfers the Interest in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

#### **17.7 Body corporate representative (Section 253B)**

- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Members. The appointment may be a standing one.
- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.

- (d) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

## **18 VOTING AT MEETINGS OF MEMBERS**

### **18.1 How many votes a Member has (Section 253C)**

- (a) On a show of hands, each Member has one vote.
- (b) On a poll, each Member has one vote for each dollar of the value of the total interests they have in the Scheme.

### **18.2 Jointly held interests (Section 253D)**

If an interest is held jointly and more than one Member votes in respect of that interest, only the vote of the Member whose name appears first in the Register counts.

### **18.3 Manager and associates cannot vote if interested in resolution (Section 253E)**

The Manager and its Associates are not entitled to vote their interest on a resolution at a meeting of Members if they have an interest in the resolution or matter other than as a Member.

### **18.4 How to work out the value of an interest (Section 253F)**

The value of an interest of a Member in the Scheme is the amount that the Manager determines in writing to be the price that a willing but not anxious buyer would pay for the Members Interest if it was sold on the Business Day immediately before the day on which the poll is taken.

### **18.5 Objections to a right to vote (Section 253G)**

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

### **18.6 Votes need not all be cast in the same way (Section 253H)**

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

### **18.7 How voting is carried out (Section 253J)**

- (a) A special or extraordinary resolution put to the vote at a meeting of Members must be decided on a poll.
- (b) Any other resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by Members entitled to vote on the resolution.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

### **18.8 Matters on which a poll may be demanded (Section 253K)**

- (a) A poll may be demanded on any resolution.
- (b) A poll cannot be demanded on any resolution concerning:
- (i) the election of the chairperson of a meeting; or
- (ii) the adjournment of a meeting.

- (c) A demand for a poll may be withdrawn.

**18.9 When a poll is effectively demanded (Section 253L)**

- (a) At a meeting of Members, a poll may be demanded by:
  - (i) at least five (5) Members present entitled to vote on the resolution; or
  - (ii) Members present with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken; or
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Members have is to be worked out as at close of business on the day before the poll is demanded.

**19 MINUTES AND MEMBERS' ACCESS TO MINUTES**

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**19.1 Minutes (Section 253M)**

- (a) A Manager must keep minute books in which it records within one month:
  - (i) proceedings of meetings of Members; and
  - (ii) resolutions of meetings of Members.
- (b) The Manager must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Manager must keep the minute books at:
  - (i) its registered office; or
  - (ii) its principal place of business in Australia; or
  - (iii) another place approved by the Commission.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

**19.2 Members' access to minutes (Section 253N)**

- (a) The Manager must ensure that the minute books for the meetings of Members are open for inspection by Members free of charge.
- (b) A Member may ask the Manager in writing for a copy of any minutes of a meeting of the Members or an extract of the minutes.
- (c) The Manager is entitled to charge a Member a copying fee of not more than \$2.50 per page or an amount not exceeding any amount prescribed, whichever is the lesser.
- (d) If the Manager requires payment for the copy, the Manager must send it:
  - (i) within 14 days after the Manager receives the payment; or
  - (ii) within any longer period that the Commission approves.

## **20 CHANGING THE CONSTITUTION**

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### **20.1 Power to Amend**

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by special resolution of the Members; or
- (b) by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

### **20.2 Lodgement of Amendment**

The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

## **21 REMUNERATION OF MANAGER**

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### **21.1 Management Fee**

- (a) Subject to clause 21.5, the:
  - (i) Manager is entitled to be paid out of the Income of the Scheme a management fee of up to 1.5% per annum of the Gross Asset Value of the Scheme; and
  - (ii) the fee is calculated and payable monthly in arrears.
- (b) The Manager's management fee must be paid up to the date of completion of the final winding up of the Scheme.

### **21.2 Custodian's fees**

If a custodian is appointed, the Manager shall be responsible for payment of the custodian's fees and expenses.

### **21.3 Disputes between the Manager and Members**

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing (including by email) or by telephone.

### **21.4 Best Efforts to Resolve the Dispute**

- (a) On receipt of a dispute from the Member, the Manager shall promptly reply (within 5 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member seek to finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the Manager has been unable to substantially respond to the complaint within 45 days the dispute resolution officer will report in writing to the Member advising them reasons for the delay, when a response can be expected and referring them to the external dispute resolution scheme.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

### **21.5 Priority**

Income distributions from the Scheme are to be conducted in the following order:

- (a) the Income Warranty (if any) has been paid;
- (b) expenses of the Scheme;
- (c) payment to each Member a distribution up to their Benchmark Return;
- (d) the Manager will pay any management fee;
- (e) as provided in clause 8.5(d).

## **22 RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER**

### **22.1 Retirement of the Manager (Section 601FL)**

- (a) If the Manager wants to retire, it must call a Members' meeting to explain its reason for wanting to retire and to enable the Members to vote on an extraordinary resolution to choose a new Manager.
- (b) If the Members choose a manager and that person has consented, in writing, to becoming the Scheme's Manager:
  - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to the name of the new Manager;
  - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Members to be the new Manager may lodge that notice.
- (c) If the Members do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Scheme's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

### **22.2 Removal of the Manager by Members (Section 601FM)**

- (a) If the Members want to remove the Manager, they must take action under clause 13.2 for the calling of a Members' meeting to consider and vote on:
  - (i) an extraordinary resolution that the current Manager should be removed; and
  - (ii) an extraordinary resolution choosing a person to be the new Manager.
- (b) If the Members vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Scheme's Manager:
  - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to name the person chosen as the Scheme's Manager; and
  - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Members to be the new Manager may lodge that notice.

## **23 CONSEQUENCES OF CHANGE OF MANAGER**

### **23.1 Former Manager to hand over books and provide reasonable assistance (Section 601FR)**

If the Manager of the Scheme changes, the former Manager must:

- (a) as soon as practicable give the new Manager any books in the former Manager's possession or control that the Law requires to be kept in relation to the Scheme; and
- (b) give other reasonable assistance to the new Manager to facilitate the change of manager.

### **23.2 Rights, obligations and liabilities of former Manager (Section 601FS)**

- (a) If the Manager of the Scheme changes the rights, obligations and liabilities of the former Manager in relation to the Scheme become rights, obligations and liabilities of the new Manager.
- (b) Despite paragraph (a), the following rights and liabilities remain rights and liabilities of the former Manager:
  - (i) any right of the former Manager to be paid fees for the performance of its functions before it ceased to be the manager; and
  - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manager; and
  - (iii) any right, obligation or liability that the former Manager had as a Member of the Scheme; and
  - (iv) any liability for which the former Manager could not have been indemnified out of the Property if it had remained the Scheme's manager.

## **24 NOTICES**

### **24.1 Notices to be in writing**

Notices given under or for the purpose of this Constitution must be written in the English language.

### **24.2 Notices to the Manager**

Notices to the Manager may be addressed to its principal place of business as disclosed in the Prospectus or notified to Members from time to time.

### **24.3 Joint Members**

Notices to a joint Member may be addressed to the one of them whose name first appears in the Register, at that one's address shown in the Register, and may be served at that address.

### **24.4 Form of Notice**

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

### **24.5 Time of delivery**

If, before 5 pm. local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

#### **24.6 Notices by post**

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

#### **24.7 Incomplete facsimile transmission**

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

#### **24.8 Facsimile transmission reasonably believed to be unintelligible**

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

#### **24.9 Request for re-transmission**

A party is not entitled to object to a facsimile transmission as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9 am. and 5 pm local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5 pm on a Business Day and is unintelligible, the receiving party has until 10 am local time on the next Business Day at the place of receipt to request re-transmission.

#### **24.10 Signatures**

A notice given by the Manager must be signed by an Officer of the Manager.

#### **24.11 Address of Applicants**

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

#### **24.12 Address of Members**

The address for service of a Member is the address shown in the Register, or in the case of joint Members, the address shown in the Register of the joint Member who is first named in the Register.

#### **24.13 Changes of address for service of the Manager**

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

### **25 FINANCIAL STATEMENTS**

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#### **25.1 Preparation of Financial Statements (Section 292)**

A financial report and directors' report for the Scheme must be prepared for each Financial Year in accordance with the requirements of the Law.

#### **25.2 Compliance with Accounting Standards and Regulations (Section 296)**

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

#### **25.3 True and Fair View (Section 297)**

The Financial Statements and notes for a financial year must give a true and fair view of:

- (a) the financial position and performance of the Scheme; and
- (b) if consolidated Financial Statements are required - the financial position and performance of the consolidated entity.

#### **25.4 Audit of annual financial report (Section 301)**

Each Scheme must have the financial report for the Financial Year audited in accordance with division 3 of part 2M.3 of chapter 2M of the Law and obtain an Auditors report.

#### **25.5 Annual Financial Report to Members (Section 314)**

- (a) The Manager must report to Members for a Financial Year by either:
  - (i) sending Members copies of:
    - (A) financial report for the year; and
    - (B) the directors' report for the year (see sections 298 - 300 of the Law); and
    - (C) the Auditors report on the financial report; or
  - (ii) sending Members a concise financial report for the year that complies with the Law.
- (b) A Scheme must report to its Members within 3 months after the end of the Financial Year.

#### **25.6 Members choices for Annual Financial Information (Section 316)**

- (a) A Member may request the Manager:
  - (i) not to send them the annual financial reports; or
  - (ii) to send them a full financial report and the directors' report and Auditors report.

A request may be a standing request or for a particular Financial Year. The Member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
- (b) The time for complying with a request under paragraph (a)(ii) is:
  - (i) 7 days after the request is received; or
  - (ii) 3 months after the end of the Financial Year;

whichever is later.
- (c) A full financial report, directors' report and Auditors report are to be sent free of charge unless the Member has already received a copy of them free of charge.

#### **25.7 Supplying information to the Auditor**

The Manager must supply the Auditor with any information the Auditor requests and which is necessary for the performance of the duties of the Auditor.

#### **25.8 Accounts of other Members**

- (a) The Manager must not prepare the financial report of the Scheme in such a way as to make it apparent to others reading the financial report (including Members) the details of individual Members Interest.
- (b) Nothing in this Constitution is to be read as requiring the Manager to send or make available reports of Member's Interests and to any person other than the Member concerned (or the Member's authorised agents).
- (c) The Manager may disclose details of the Members Interests to those involved in the preparation and auditing of the Scheme.
- (d) This clause is subject to any requirements imposed on the Manager by law.

## **26 AUDITOR**

### **26.1 Appointment**

- (a) The Manager will appoint the Auditor and the auditor of the Compliance Plan. The appointments will be a registered company auditor according to the provisions of the Law;
- (b) The appointee may be the auditor of the Manager unless otherwise restricted by the Law.

### **26.2 Removal or Retirement of Auditor**

- (a) The Manager may remove the Auditor or auditor of the Compliance Plan at any time.
- (b) The auditors may retire after giving notice to the Manager. The auditors must give at least one month's notice unless otherwise agreed with by the Manager.

## **27 GENERAL**

### **27.1 Payments to Members**

Any money payable by the Manager to a Member under this Constitution may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Member and a good discharge to the Manager.

### **27.2 Retention of documents**

The Manager is to retain, and make available to the auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

### **27.3 Copies of this Constitution**

A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

### **27.4 Governing law and jurisdiction**

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

### **27.5 No Waiver**

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

## 28 RESOLUTION OF DISPUTES

### 28.1 Complaints Handling System

The Manager shall establish a complaints handling framework that complies with AS ISO 10002-2006 Customer satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004, MOD) for the handling of disputes under this Constitution.

### 28.2 Essential Elements

The complaints handling process shall have as a minimum requirements for:

- (a) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Member and the Manager.
- (c) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility).** The complaints handling process shall be well publicised to Members and staff of the Manager and shall include information to Members about the right to complain.
- (e) **(Access).** The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance).** Assistance shall be available for Members in a formulation and lodgement of complaint.
- (g) **(Responsiveness).** Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (h) **(Charges).** Complaints handling shall be at no charge to the particular complaining Member. The Manager shall be entitled to be reimbursed for its costs from Scheme assets in dealing with the particular complaints.
- (i) **(Remedies).** The complaints handling process shall have the capacity to determine and implement remedies.
- (j) **(Data collection).** There shall be appropriate systematic recording of complaints by Members and their outcome.
- (k) **(Systematic and recurring problems).** Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (l) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

### 28.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing.

### 28.4 Best Efforts to Resolve the Dispute

- (a) On receipt of the written notice of dispute from the Member, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.

- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the Manager's compliance committee if a compliance committee exists or alternatively the board of the Manager.
- (e) The Manager's board or compliance committee shall meet within 21 Business Days of receipt of a written complaint by a member, received pursuant to paragraph (j) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the board or compliance committee with or without legal representation and to be heard either in person or through the Member's legal representative.
- (g) Subsequent to hearing the Member's complaint the board or compliance committee shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board or compliance committee must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision.
- (i) If the Member is dissatisfied with the determination of board or compliance committee then the Member may refer the complaint to the Dispute Resolution Service.
- (j) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

## **29 IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS**

Notwithstanding anything to the contrary contained or implied by this Deed, where:

- (a) Assets;
- (b) Current Interest Value;
- (c) Current Value;
- (d) Gross Asset Value;
- (e) Income;
- (f) Issue Price;
- (g) Issue Provision;
- (h) Liabilities;
- (i) Market Value;
- (j) Net Income;
- (k) Redemption Price;
- (l) Redemption Amount;
- (m) Authorised Investments;
- (n) Scheme;
- (o) Value; or

- (p) similar terms or phrases ('the Items'),
- (q) are used for the purposes of calculating:
- (r) the issue or redemption price of Interests;
- (s) the fees payable to the Manager, any agent of the Manager or any custodian who holds Scheme property;
- (t) the extent of any limitation on borrowings or on investment of Scheme property; or
- (u) the amount of a distribution payable to Members,
- (v) the Items are to be calculated by reference to generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

**EXECUTED** as a Deed Poll

Signed sealed and delivered  
by

**EQUITITRUST LTD ACN 061 383 944**  
on 3 16 /2011 by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/~~Secretary~~

^ DAVID KENNEDY  
Full name of Director

^ MARK McIVOR  
Full name of Director/~~Secretary~~

"DW-4"

**EQUITITRUST PRIORITY CLASS INCOME  
FUND**

**ARSN 089 079 729**

**REPLACEMENT CONSTITUTION**

REF: #188593

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## EQUITITRUST PRIORITY CLASS INCOME FUND

### REPLACEMENT CONSTITUTION

**THIS DEED POLL** is made on 30 November 2010

**BY** **EQUITITRUST LIMITED ACN 061 383 944** of 67 Thomas Drive,  
Chevron Island in the State of Queensland

('Manager')

#### RECITALS

- A. The Manager is the responsible entity of the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ('Original Deed') as amended from time to time ('the Former Constitution').
- B. Pursuant to Clause 20.1(a) of the Former Constitution, the sole Member of the Scheme approved the amendments to the Former Constitution contained in this Deed Poll in accordance with the requirements of the Australian Securities and Investments Commission Class Order 09/552 on 30 November 2010.
- C. With effect from the date of this Deed Poll the Former Constitution is replaced with this Deed Poll including amending the name of the Scheme from the Equititrust Income Fund No. 2 to the Equititrust Priority Class Income Fund.
- D. From time to time the Manager may invite persons to invest in the Scheme and anyone who wants to participate in the Scheme may invest by completing and sending the Application and Application Money to the Manager.
- E. This Constitution is made with the intent that the Manager and each Member will be bound by it.

#### 1. DEFINITIONS AND INTERPRETATIONS

##### 1.1 Defined Terms

In this Constitution unless the context otherwise requires:

**'Accounting Standards'** has the meaning given to that term in section 9 of the Law;

**'Applicant'** means a person who has completed and lodged with the Manager an Application, pursuant to a Offer Document, and has paid the Application Money to which the Application refers, and includes their successors in title and permitted assigns;

**'Application'** means a duly completed and signed application to invest in a Scheme, lodged with the Manager and accompanied by payment of the Application Money;

**'Application Account'** means the Bank account established by the Manager under clause 3.3;

**'Application Money'** means all money paid by the Applicant pursuant to a Offer Document, accepted by the Manager and held by the Manager in the Application Account;

**'Approved Valuer'** means any person or firm appointed by the Manager, to value any property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 2 years continuous experience of valuation.

**'Assets'** means all assets and liabilities of the Scheme which are, or would be, recognised as assets or liabilities of the Scheme by the application of generally accepted accounting principles;

**'Associate'** means an associate as defined in Division 2 of Part 1.2 of the Law;

**'Auditor'** means the auditor for the Scheme, appointed by the Manager, as required under the Law;

**'Authorised Investments'** means:

- (a) Mortgage Investments;
- (b) loans of any kind including a loan to Equititrust Limited as the responsible entity of the Equititrust Income Fund ARSN 089 079 854 secured by a fixed and floating charge or such other appropriate security;
- (c) deposits at call or for a term with any Bank;
- (d) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank; and
- (e) any authorised investment as defined in section 21 of the *Queensland Trusts Act 1973*.

**'Bank'** has the meaning given to that term in section 5 of the *Banking Act 1959* and also includes a bank constituted by or under a law of the State or Territory and a 'foreign bank' as that term is defined in section 5 of the *Banking Act 1959*;

**Benchmark Return** is the relevant distribution hurdle rate for each Member (as nominated by the Manager when the Member invests in the Scheme) which that Member must receive from their investment in the Scheme before the Manager is entitled to receive the management fee referred to in clause 14. The Benchmark Return is not a forecast or a representation that the Member will receive this return or indeed any return from their investment in the Scheme;

**Borrower** means a person who borrows or is lent funds from the Manager under a Mortgage Investment or other loan which forms an Authorised Investment;

**Business Day** means any day on which trading banks on the Gold Coast are generally open for business;

**Cash** includes cheques, currency notes, bank cheques, bank transfers and bank drafts in the lawful currency of Australia or another country;

**Certificate** means a certificate or document issued by the Manager to the Applicant evidencing the acceptance by the Manager of the Application;

**Class** has the meaning given to that term by clause 2.8.

**Commencement Date** means the date on which the Constitution was registered by the Commission;

**Commission** means the Australian Securities and Investments Commission;

**Compliance Plan** means the compliance plan for the Scheme and registered by the Commission and includes any approved amendments to the compliance plan from time to time;

**Constitution** means this Deed, and prior to thereto, shall where the context permits, also include the Former Constitution;

**Current Interest Value** means:

- (i) in relation to an Interest for the purpose of determining the Issue Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time; and
- (ii) in relation to an Interest for the purpose of determining the Redemption Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time;

**Current Liabilities** includes all of the Liabilities of the Scheme that would in the ordinary course of business be due and payable within 12 Months from the date on which they are ascertained;

**'Current Value'** means in relation to the Scheme the amount derived by deducting from the Value of the Assets of the Scheme:

- (a) all amounts borrowed for the purpose of the Scheme and remaining owing;
- (b) the amount of all actual Liabilities of the Scheme (other than interest and those referred to in paragraph (a) of this definition) owing but unpaid;
- (c) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Scheme (other than those referred to in paragraphs (a) to (c) of this definition);
- (d) such amounts which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments of the Scheme (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (e) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Scheme;

**'Default'** means and includes any event of default under a document that secures a Mortgage Investment or loan which forms an Authorised Investment ;

**'Dispute Resolution Service'** means the dispute resolution service approved by the Commission which the Manager nominates from time to time;

**'Distributable Amount'** means, in relation to the Scheme, any amounts determined by the Manager from time to time to be distributed to Members including:

- (a) the Net Income of the Scheme;
- (b) other Income of the Scheme; and
- (c) any amount of capital of the Scheme,  
up to that Member's Benchmark Return.

**'Distribution Period'** is the regular period, being either monthly, quarterly, yearly or some other regular period, as agreed between the Manager and Member that Income from the Scheme will be distributed to Members.

**'Expert'** includes solicitors, barristers, accountants, bankers, financial advisers and other professionally qualified consultants;

**'Financial Statements'** has the meaning given to that term in section 9 of the Law;

**'Financial Year'** means the period of 12 Months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Scheme;

**'Former Constitution'** means the Deed Polls dated 9 August 1999 and 6 September 1999 made by the Manager and referred to in the Recitals;

**'GST'** has the meaning given to that term by the GST Act;

**'GST Act'** means *A New Tax System (Goods & Services Tax) Act 1999* as amended;

**'Income'** means all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles;

**'Interest'** means the beneficial interest of a Member in the Scheme;

**'Issue Price'** means in relation to the issue of an Interest, an amount equal to the Current Interest Value of the Interest at the time of issue.

**'Issued Interests'** means all Interests for the time being created and issued and not cancelled;

**'Land'** means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and includes buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon;

**'Law'** means the *Corporations Act 2001* (Cth);

**'Liabilities'** in respect of the Scheme includes:

- (a) unpaid administrative costs and expenses, including fees of the Manager;
- (b) accrued charges in respect of or owing in relation to any Asset of the Scheme;
- (c) amounts required to meet present liabilities of the Scheme;
- (d) amounts of all borrowings of the Scheme;
- (e) any provisions for Taxes which, in the opinion of the Manager, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Manager, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition;

**'Manager'** means Equititrust Limited ACN 061 383 944 or any other person for the time being acting as manager, provided that at all times the Manager is the responsible entity of the Scheme as defined in section 9 of the Law;

**'Margin Fee'** has the meaning given to that term under Clause 14.

**'Market Value'** of an investment means the current market value determined in accordance with a method agreed between the Manager and an Approved Valuer or Expert. If there is a dispute between the Manager and the Approved Valuer, the decision of the Approved Valuer shall prevail;

**'Member'** means a person whose Application is accepted and for the time being is registered under the provisions of this Constitution as a member of the Scheme and includes persons jointly so registered;

**'Month'** means calendar month;

**'Mortgage Investment'** means a loan secured by a registered mortgage over Land and any other Security Property;

**'Net Income'** means in relation to the Scheme, 'net income' as that term is defined in section 95 *Tax Act 1936* as calculated each Financial Year;

**'Officer'** means a person who is a director, secretary or executive officer of the Manager;

**'Offer Document'** means a offer document inviting Applications or offers to join the Scheme established by the Constitution;

**'Quarter'** means each period of 3 Months ending on the last days of March, June, September and December in each year;

**'Redemption Amount'** means in respect to a Member, the number of Interests held by the Member which are to be redeemed multiplied by the Redemption Price calculated at the time of redemption;

**'Redemption Date'** means the date the Manager agrees to redeem a Members' Interests;

**'Redemption Price'** means in relation to the redemption of an Interest, an amount equal to the Current Interest Value of the Interest at the time of redemption.

**'Register'** mean the register of Members to be established and kept by the Manager under clause 11.2;

**'Regulations'** means the *Corporations Regulations 2001* (Cth);

**'Related Party'** means a related party as defined in Part 5C.7 of the Law;

**'Scheme'** means the scheme established in accordance with this Constitution;

**'Scheme Accounts'** means the Scheme's bank account;

**'Security Property'** means the property offered as security by a Borrower;

**'Tax Act'** means the *Income Tax Assessment Acts of 1936 and 1997* (Cth) and the regulations made thereunder from time to time;

**'Taxes'** includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Scheme or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, charges, GST, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
  - (i) Application Money;
  - (ii) the Scheme, Scheme Accounts, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Scheme, the Assets or the Authorised Investments; or
  - (iii) the Manager in its capacity as manager of the Scheme,

all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Member or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

**'Value'** of an Asset when the value of that Asset is required to be ascertained or taken into account under this Deed or the Scheme shall mean its Market Value as last determined.

**'Withdraw Offer'** means a withdraw offer made by the Manager in accordance with Part 5C.6 Corporations Act.

**'Withdrawal Request Form'** means the request form prescribed by the Manager in accordance with clause 10.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person include corporations and body corporates and vice versa;
- (c) words denoting gender include both genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and do not affect interpretation;
- (i) references to a party to this Constitution include the party's successors and permitted assigns;
- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution; and

- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

## **2. CONSTITUTION AND DURATION**

### **2.1 Equititrust Priority Class Income Fund**

This trust established by the Original Deed is now called the Equititrust Priority Class Income Fund, which commenced on the Commencement Date.

### **2.2 Assets of Scheme**

The Manager declares that it holds and will at all times hold Assets on trust for Members of the Scheme subject to the provisions of the Constitution and the Law.

### **2.3 Manager to act as responsible entity of the Scheme**

The appointment of the Manager as manager of the Scheme is hereby confirmed and the Manager agrees to manage the Scheme upon and subject to the terms and conditions contained in the Constitution.

### **2.4 Manager to establish Fund**

The Manager shall, on the execution of the Constitution, lodge and hold the sum of one hundred dollars (\$100) to establish and constitute the Scheme. The Manager may, from time to time, cause or cause to be received more cash by way of addition to the Scheme to be held upon the trusts of the Constitution.

### **2.5 Interests**

- (a) The beneficial interest in the Scheme shall be divided into Interests.
- (b) Subject to this Constitution, each Interest represents an undivided part of beneficial interest in the Assets of the Scheme as a whole and not any particular Asset.
- (c) The Manager must issue an Interest at the Issue Price.

### **2.6 Fractional Interests**

The Manager may at its discretion create a fractional Interest in 100 parts for an amount less than a whole dollar notwithstanding any other provision of this Constitution, the expression 'Interest' shall, where the context will allow, be deemed to include such a fractional Interest and such fractional Interest shall carry with it the rights and obligations which attach to a whole Interest but be limited to the proportion of those rights and obligation which the number of 100ths in such fractional Interests bears to 1. A fractional Interest may also be created by the redemption of part of a whole Interest.

## **2.7 Nature of Beneficial Interest**

A Member shall be entitled under this Constitution or as provided by the Law to a specific beneficial interest in the Scheme but such interest shall not entitle the Member other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

## **2.8 Classes of Interest**

- (a) The Manager may create and issue Interests with different rights and restrictions as contained in an Offer Document or as otherwise determined by the Manager (**Class**).
- (b) Subject to the rights and restrictions of a Class as provided in paragraph (a) each Interest confers on its holder identical rights to those conferred by each other Interest of that Class.
- (c) The Manager may divide issued Interests into different Classes.

## **2.9 Binding Effect of Constitution**

The Constitution operates as a deed and is binding on the Manager and each Member and all persons claiming through them as if they were parties to the Constitution, and each Applicant by signing the Application, acknowledges being so bound.

## **2.10 Minimum Investment Amounts and Holdings**

The Manager may at any time determine minimum amounts which may be invested and accepted as Application Moneys in the Scheme including any minimum holding of Interests in the Scheme.

# **3. APPLICATION PROCEDURES**

## **3.1 Offer**

The Manager may, in accordance with the provisions of the Law and this Constitution, invite investment in the Scheme and issue a Offer Document in relation to such an invitation.

### **3.2 Applications**

A person who wishes to invest in the Scheme must make an Application in the manner specified in the Offer Document and pay the Issue Price associated with the Application Money payable.

### **3.3 Application Account**

Unless otherwise required by the Law, the Manager must establish and maintain a Bank account in the name of the Manager to be designated the Application Account for the Scheme. The Application Account must be established and operated in accordance with the requirements of the Law.

### **3.4 Application Money to be paid to Manager**

The Manager must, in each Offer Document and other representations relating to the Scheme, direct how all cheques and other payment orders in respect of Applications are to be drawn on account of the Scheme.

### **3.5 Application Money with completed Application**

Where the Manager receives Application Money with a completed Application relating to a current Offer Document, the Manager must pay the Application Money into the Application Account as soon as practicable after its receipt, but no later than the close of business on the next Business Day after the day of receipt.

### **3.6 Application Money without completed Application**

Where the Manager receives Application Money that is not accompanied by a completed Application relating to a current Offer Document it will, as soon as practicable, return the Application Money to the Applicant or:

- (a) attempt to obtain the Application from the Applicant;
- (b) pay the Application Money into the Application Account; and
- (c) if interest accrues while the Application Money is held in the Application Account, ask the Applicant, in writing, whether the Applicant wants the interest to be dealt with as additional Application Money or to be paid to the Applicant.

### **3.7 Dealing with Application Money**

If the Manager pays the Application Money into the Application Account under clause 3.6, the Manager will:

- (a) hold the Application Money on trust for the Applicant, until the Application is received; and

- (b) if the Application is received by the Manager within 30 days after the Application Money is received:
  - (i) apply the Application Money to the Scheme Accounts as soon as practicable after receiving the Application; and
  - (ii) deal with any interest accrued while the Application Money was held by the Manager in the Application Account in the manner disclosed in the Offer Document; and
- (c) if the Application has not been received by the Manager within 30 days after the Application Money was received, return the Application Money and interest (if any) to the Applicant as soon as practicable.

### **3.8 Manager's discretion**

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within a further 10 Business Days after the notice of rejection is given, refund to the Applicant the Application Money, subject to clearance of the Application Money.

### **3.9 Manager may withdraw Offer Document**

The Manager may in its sole discretion determine at any time to withdraw a Offer Document. The Manager within 5 Business Days after the notice to withdraw the Offer Document is given, repay to all Applicants their Application Money paid pursuant to that Offer Document and held in the Application Account. Any interest that has accrued on Application Money in the Application Account shall be dealt with as disclosed in the Offer Document.

### **3.10 Manager to Confirm Acceptance**

- (a) Once the Application is accepted the Manager must enter the Applicant on the Register as a Member.
- (b) The Manager must transfer the Application Money of the Member to the Scheme Accounts and issue Interests to the Member at the Issue Price.

### **3.11 Issue Price**

Interests are issued at the Issue Price.

### **3.12 Certificates**

The Manager

- (a) may issue to each Member a Certificate as evidence of the Interest held by a Member; and
- (b) may cancel existing Certificates and reissue new Certificates where the Manager has been supplied with evidence to the satisfaction of the Manager that the existing Certificate has been lost, or stolen.

### **3.13 Form of Certificate**

The Certificate is to be in the form as determined by the Manager.

### **3.14 Joint Members**

In the case of joint Members, only the person whose name appears first in the Register is entitled to a Certificate relating to that Interest.

### **3.15 Replacement Certificates**

Replacement Certificates may be issued in the circumstances and subject to such conditions as determined by the Manager.

### **3.16 Scheme Accounts**

- (a) The Scheme Accounts may pool individual Member's funds.
- (b) The Manager shall at all times invest the Scheme Accounts in Authorised Investments.

## **4. RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER**

### **4.1 Exercise of powers of the Manager**

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purposes of a Scheme and on security of the relevant Assets.

### **4.2 Power to Appoint Agent (Section 601FB(2))**

- (a) The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Scheme.
- (b) For the purpose of determining whether:
  - (i) there is a liability to the Members; or

- (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

#### **4.3 Authority for Agent (Section 601FB(3))**

An agent appointed, or a person otherwise engaged, by:

- (a) the agent or person referred to in clause 4.2; or
- (b) a person who is taken under this clause to be an agent of the Manager;

to do anything that the Manager is authorised to do in connection with a Scheme is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 4.2.

#### **4.4 Liability of Agent (Section 601FB(4))**

If:

- (a) an agent holds any Assets on behalf of the Manager; and
- (b) the agent is liable to indemnify the Manager against any loss or damage that:
  - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and
  - (ii) relates to a failure by the Manager to perform its duties in relation to a Scheme;

then any amount recovered under the indemnity forms part of the Assets.

#### **4.5 Attorney**

Each person who completes an Application accepted by the Manager or acquires an Interest, appoints the Manager and any director, officer, attorney or substitute nominated by the Manager severally for this purpose as its attorney with the rights and powers to:

- (a) sign complete or otherwise arrange any mortgage, loan, charge and all other documents required by the Manager in respect of any Authorised Investment;
- (b) sign a Withdrawal Request Form on behalf of the person/Member to facilitate that Members withdrawal from the Scheme;

- (c) appoint substitutes or otherwise delegate its powers (including this power of delegation);
- (d) execute any document or take any action in the Managers opinion it is reasonably necessary to protect the interests of the Member, Members or the Manager in respect of any Authorised Investment;
- (e) conduct or deal with any Security Property provided in respect of a Authorised Investment where the Borrower Defaults;
- (f) exercise any rights (including its right to exercise a power of sale) pursuant to any mortgage and/or the *Property Law Act 1974*;
- (g) subject to any mortgage documentation, execute any document or instrument required for conducting any power of sale, transfer, lease or other disposition partial or in full the property offered as security for the Authorised Investment;
- (h) may incur any debts in relation to any property offered as security for a Authorised Investment and generally manage the Scheme property on behalf of the Members; and
- (i) without limiting the aforementioned, do everything and anything which in the attorneys reasonable opinion is necessary or expedient to enable the exercise of any rights of the Manager, the Member or the Members under the Authorised Investment in relation to any Authorised Investment or the Scheme property.

## **5. INDEMNITIES AND REIMBURSEMENTS OF EXPENSES**

### **5.1 Indemnity**

The Manager is indemnified out of the Assets for all debts, liabilities, damages, costs, taxes, charges, expenses and outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, taxes, charges, expenses or outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

### **5.2 Limitation of liability**

Except in the case of a failure to exercise care and diligence, the Manager will not be liable to account to nor to indemnify the Scheme, or a Member or person claiming under or on behalf of a Member, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise);
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Scheme, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made;
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager;
- (d) anything done in good faith by the Manager in respect of an Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate; or
- (e) any other action taken by the Manager in respect of the Scheme where the Manager has acted in good faith.

### **5.3 Further limitation of liability of the Manager**

Except in the case of the Manager's failure to exercise care and diligence, the Manager is not liable to Members to any extent greater than the extent of the Assets vested in the Manager or received and/or held by it in accordance with the provisions of this Constitution.

### **5.4 Transactions involving the Scheme**

Subject to the Law and the Manager's duties to Members, the Manager is entitled, in any capacity other than as manager of the Scheme, to contract with a Member, a Scheme or any Authorised Investment or any property proposed to be acquired as an Asset, without any liability to account to the Members of that Scheme only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution; and
- (b) the Manager acts in the transaction with good faith to the Members.

### **5.5 Further indemnity**

If the Manager acquires an Asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of a Scheme which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets in respect of that liability.

## **5.6 Dealings by the Manager**

Nothing in this Constitution prevents the Manager or any person associated with the Manager from being a Member.

## **6. INVESTMENT**

### **6.1 Investment Management**

It is the role of the Manager to invest funds held in the Scheme Account in Authorised Investments for Members.

### **6.2 Investment in Authorised Investments**

The Manager subject to the terms of this Constitution has complete and unfettered discretion to invest Members' funds in Authorised Investments.

### **6.3 Investment Oversight**

The Manager shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery action under Mortgages or other securities held in respect of Authorised Investments made in order to recover or maximise recovery of the capital and any unpaid income component of any Authorised Investment.

## **7. INCOME OF THE SCHEME**

### **7.1 Manager to collect Income**

The Manager will receive and collect the Income of the Authorised Investments and will pay it into the Scheme Accounts. The Manager will make all payments relating to the Scheme from the Scheme Accounts.

### **7.2 Decision of Manager final**

The decision of the Manager as to whether any item amount to be distributed to Members is Income or capital shall be final.

### **7.3 Distribution of Income**

The Manager must distribute to each Member, that Member's Income entitlement, accrued pursuant to clause 7.4 not less than 14 days after the end of the Distribution Period.

### **7.4 Distribution Period**

The Distribution Period for each Member shall be:

- (a) quarterly, monthly, half yearly, or yearly as disclosed by the Manager in the Offer Document; or
- (b) if the Manager so provides, as agreed between the Member and the Manager at the time the Members Application is accepted.

### **7.5 Distribution Surplus**

Notwithstanding any other provision in this Constitution, following each Distribution Period the Distributable Amount shall be paid in the following order of priority and subject to the provisions of clauses 2.8 and 14.5:

- (a) payment to each Member a distribution up to their particular Benchmark Return;
- (b) payment of the Manager's management fee;
- (c) payment of Scheme expenses; then the balance
- (d) a further distribution to Members commensurate with the number of Interests they hold.

### **7.6 Manager to keep separate accounts**

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Member.

### **7.7 Reinvestment of income entitlement**

- (a) The Manager may invite Members in the Scheme to reinvest any or all of their distribution by way of application for additional Interests in the Scheme. The terms of any such invitation will be determined by the Manager and may, amongst other things, provide that unless a Member otherwise directs the Manager, that Member will be deemed to have elected to reinvest all or part of their distribution. Any invitation may be withdrawn or varied by the Manager.
- (b) Interests so applied for will be deemed to have been issued on the first day of the Distribution Period immediately following the Distribution Period in respect of which the distribution has accrued or such other date determined by the Manager.

### **7.8 Members presently entitled to Distributable Income**

In accordance with clause 7.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all distributable income derived during the relevant Distribution Period in proportion to the Interests of which they are registered as the holders at such time.

## **8. TERMINATION OF THE SCHEME**

### **8.1 Termination of a Scheme**

Subject to clause 8.2, the Scheme will terminate 80 years from the Commencement Date unless otherwise specified in the Offer Document for the Scheme.

### **8.2 Defined Event of Winding Up**

The Manager must wind up the Scheme or cause the Scheme to be wound up on the occurrence of any one of the following circumstances:

- (a) The Scheme is without a Manager for whatever reason;
- (b) The Manager uses the mechanism provided for in Section 601NC of the Law;
- (c) The Members decide in a meeting called in accordance with this Constitution and the Law to wind up the Scheme;
- (d) The Scheme comes to the end of its term (as set out in clause 8.1);
- (e) Any of the circumstances set out in Section 601NE of the Law apply such that the Manager is required to wind up the Scheme; or
- (f) A court orders the Scheme to be wound up pursuant to Section 601ND of the Law.

### **8.3 Procedure for Winding Up**

- (a) Unless otherwise required by the Law, the Manager is responsible for winding up the Scheme.
- (b) The Manager must convert to money all Authorised Investments, deduct all proper costs and then distribute to each Member funds in proportion to the number of Interest held by a Member divided by the total number of Interests on issue. The Manager may make interim distributions during the winding up process.
- (c) The Manager must proceed with the winding up efficiently, diligently and without undue delay. The Manager must complete the winding up process within such time frame as it considers is available to do so, whilst complying with its duties under this Constitution.
- (d) The Manager may retain from the proceeds of winding up:
  - (i) sufficient funds to meet future obligations which the Manager reasonably believes will fall due after a distribution is made to Members; and

- (ii) to pay its own remuneration expenses for work to be done following the realisation of Members' Funds.
- (e) During the winding up of the Scheme, the Manager may terminate any other agreements or arrangements it has entered into with Members which relate to the Scheme. The Manager must give notice to the Members of the termination of those agreements or arrangements.
- (f) Once the Manager believes the winding up is complete, the Manager must engage a registered company auditor to audit the final accounts of the Scheme. The Manager must send a copy of any report made by the auditor to Members within 30 days after the Manager receives the report from the auditor.

## **9. TRANSFER AND TRANSMISSION OF MEMBERS' INTERESTS**

### **9.1 General principles when dealing with Members' Interests**

- (a) A Member may transfer their Interests only in accordance with the provisions of this Constitution and, in particular:
  - (i) the transferee must agree to be bound by the provisions of this Constitution; and
  - (ii) a transfer of the Interests in the Scheme must be delivered to the Manager together with the Certificate or Certificates (if any) in respect of the Interests to be transferred.
- (b) The Manager will not be required to effect any transaction or dealing in any Interest on behalf of or for the benefit of or at the request of any Member unless the Member has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Member concerned and retain the amount so paid out of any moneys to which the Member may be, or become, entitled.
- (c) The Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 11.6.
- (d) Every instrument of transfer of an Interest which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.

- (e) Where the Manager refuses to register any instrument of transfer, within 2 Months after the date on which the instrument was deposited with the Manager, the Manager will give notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within 2 Months of the giving of the notice.
- (f) The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (g) Upon the registration of a transfer of any Interest, the Manager will within one Month after the date of such registration issue to the transferee or transmittee written confirmation of the transfer or transmission.

## **9.2 Form of transfer**

The transfer of an Interest shall be form in the nominated by the Manager. The form will have regard to the need for the transferee to be bound to this Constitution and any other arrangements which go to the integrity of the Scheme.

## **9.3 Transmission**

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Member the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Interests registered in the deceased's name;
- (b) any person becoming entitled to any Interests in consequence of the death or bankruptcy of a Member may upon:
  - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Interests as the Manager deems sufficient;
  - (ii) in the case of the death of the Member, producing to the Manager evidence of payment of any duties the Manager may require; and
  - (iii) delivering up to the Manager for cancellation the Certificate for the Interests,

be registered as the holder of the Interests and the Manager shall cancel the existing Certificate for Interests and issue a new Certificate for Interests in their name;

- (c) any person becoming entitled to any Interests because of the death or bankruptcy of a Member may give a good and sufficient discharge to the Manager for any money paid to them but are not entitled to receive notices of or to attend or vote at any meetings of Members until they have become registered as a Member in respect of such Interests.

## **10. WITHDRAWAL**

### **10.1 Withdraw Offers**

- (a) Members will only be able to redeem their Interests under a Withdraw Offer made by the Manager in accordance with Part 5C.6 of the Law.
- (b) The Manager may, in its absolute discretion, determine whether or not to make a Withdraw Offer and the Manager may determine that the Withdraw Offer apply to Members in a specific Class of Members.

### **10.2 Form of a Member's request**

- (a) The Manager will prescribe from time to time a Withdrawal Request Form.
- (b) The Manager must keep a supply (either hard copy or on computer) of Withdrawal Request Forms at its registered office and principal place of business.
- (c) The Manager must provide Members on request with the current Withdrawal Request Form free of charge.

### **10.3 Accompanying evidence**

Any Member who makes a request for withdrawal must do so on the current Withdrawal Request Form and also provide satisfactory evidence to the Manager of the Member's title or authority to deal with the Member's Interest. The Manager must act reasonably in determining what is satisfactory evidence.

### **10.4 No redemption obligation**

The Manager is not obliged to cause the redemption of Interests in the Scheme in any circumstances.

### **10.5 Staggering of Redemption Dates**

Despite any provision of this Constitution, the Manager may determine more than one Redemption Date for Interests to be redeemed pursuant to a Withdrawal Request Form and such Interests will be redeemed over those days in such proportions as the Manager determines, provided that all such Interests are redeemed within the time specified in clause 10.1.

### **10.6 Funding of redemption**

To fund the redemption of Interests out of the Scheme, the Manager may apply or realise part of the Assets, and/or raise or borrow money, either unsecured or secured against Assets.

### **10.7 Resale and redemption of Interests by Manager**

Where the Manager holds Interests for its own benefit, it may redeem those Interests out of the Scheme. This clause 10 will apply, with the necessary changes, to that redemption.

### **10.8 Cancellation of Interests**

Interests which have been redeemed out of the Scheme will be cancelled and the Manager will record the cancellation in the Register.

### **10.9 Transfer of specific assets**

The Manager may determine that the Redemption Amount will be satisfied wholly or in part by the transfer of investments of the Scheme at their Market Value. Expenses incurred in respect of the transfer must be paid by the Member.

### **10.10 Compulsory redemption**

The Manager may compulsorily redeem any Members Interests under a Withdraw Offer provided they are paid the relevant Redemption Amount for their redeemed Interests.

### **10.11 Components of Redemption Price and payment of accrued distributions**

- (a) Unless the Manager otherwise notifies a Member whose Interests are redeemed, the Redemption Price paid to that Member will comprise capital only. The Manager may notify a Member that the Redemption Price comprises part capital and part Income. Where the Redemption Price paid to a Member comprises Income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the Income component and the Manager must notify the Member of the Income component of the Redemption Price paid to them. This notice may be given at the time of redemption but must in any case be given within 3 months of the end of the Financial Year of the Scheme in which the redemption occurs.
- (b) Where an Interest is redeemed after a right to a distribution, whether income or capital, has accrued in respect of that Interest, that distribution may be paid to the holder of the Interest at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Interests.

### **10.12 No required disposal**

A Member is not required to dispose of its Interests except as otherwise provided in this Constitution and the Corporations Law.

## **11. REGISTERS**

### **11.1 Member Register**

The Manager covenants that it will keep and maintain an up-to-date Register at the registered office or principal place of business of the Manager in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time considers appropriate.

### **11.2 Details on Register**

Subject to clause 11.3, there will be entered in the Register:

- (a) the names and addresses of the Members from time to time;
- (b) the Interests held by each Member from time to time;
- (c) the date on which the name of each Member was entered in the Register, and
- (d) the date on which any person ceased to be a Member.

### **11.3 Expunging Information**

The information relating to a Member (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Member ceased to be a Member.

### **11.4 Inspection of Register**

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Member or representative of a Member and the inspection relates to that part of the Register that contains particulars relating to the Member; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
  - (i) calling a meeting of Members;

- (ii) notifying a Member of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution; or
- (iii) any other purpose approved in writing by the Commission.

### **11.5 Copies of Register**

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager but shall not exceed \$2.50 per page.
- (b) Paragraph (a) does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by the Commission.

### **11.6 Closure of Register**

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

### **11.7 Change of Member Details**

Each Member will give the Manager notice of any change of name or address on the part of such Member and the Manager, upon receiving such notification, will alter the Register accordingly.

## **12. MEMBER MEETINGS**

### **12.1 Managers Power to call Members Meeting**

The Manager may call a meeting of the Members at any time.

### **12.2 Meeting process**

Meetings of Members are to be called and conducted in the manner prescribed by the Law.

## **13. CHANGING THE CONSTITUTION**

### **13.1 Power to Amend**

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by special resolution of the Members; or

- (b) by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

### **13.2 Lodgement of Amendment**

The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

## **14. REMUNERATION OF MANAGER**

### **14.1 Manager's Fee Payable**

Subject to any restrictions contained in the Offer Document, the Manager is entitled to claim from the Assets a fee of up to 0.15% of the gross value of the assets of the Scheme for managing the Scheme.

### **14.2 Custodian's fees:**

If a custodian is appointed, the Manager shall be responsible for payment of the custodian's fees and expenses.

### **14.3 Manager's Expenses**

The Manager will be paid or reimbursed on a full indemnity basis out of the Assets for all expenses and liabilities which the Manager may incur in connection with the relevant Scheme or in performing its obligations or exercising its powers under the Constitution including but not limited to the following:

- (a) all costs, charges and expenses incurred in connection with the acquisition, maintenance, improvement, custody, transfer, financing or disposal of the Assets, including commissions, procurement fees, brokerage, legal fees, Taxes, Bank charges and stamp duty;
- (b) the fees and expenses of the auditors;
- (c) stamp duty on cheques;
- (d) all costs, charges and expenses incurred in connection with the borrowing of money on behalf of the Scheme or in connection with the Assets including stamp duty, Taxes, establishment fees, legal fees and interest together with discount and acceptance fees in respect of bill facilities;
- (e) all Taxes (save those payable in respect of the Income of the Manager) whether payable or which may become payable in respect of the Scheme;
- (f) fees and charges of any regulatory authority including, without limitation, local government, titles office, stamps office and the Commission;

- (g) fees and expenses of any Approved Valuer and of any Expert from time to time employed by the Manager in the discharge of its duties under this Constitution but no reimbursement of the fees and expenses of such Expert will be paid from the Scheme where such expert is appointed to perform the functions of the Manager;
- (h) all costs, charges and expenses of and incidental to the preparation, execution and stamping of any deeds supplemental hereto;
- (i) the costs of convening and holding any meeting of Members;
- (j) costs of printing, postage and other fees in respect of all electronic transfers or cheques, accounts, distribution statements, notices and other documents posted to all or any Members in accordance with provisions of this Constitution including envelopes enclosing same;
- (k) all costs charges and expenses incurred in relation to the preparation, and the distribution of any periodical or other report or document required by law to be prepared in respect of the Scheme or prepared by the Manager in good faith in respect of the Scheme;
- (l) expenses in connection with the keeping and maintaining of financial records and registers (including the Register);
- (m) all agents' fees and expenses;
- (n) costs incurred by the Manager in taking necessary action in respect of any Authorised Investment made on behalf of a Member (eg. legal proceedings instituted against a Borrower in default);
- (o) costs and disbursements incurred by or on behalf of the Manager in connection with the retirement of or the appointment of a substitute responsible entity or agent;
- (p) costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings to enforce any provisions of the Constitution;
- (q) insurance premiums involved in insuring any Asset;
- (r) costs and disbursements incurred in the preparation and lodgment of returns under the law or any other statute;
- (s) costs of acquiring, establishing and developing computer software systems required for the administration of the Scheme;
- (t) all other costs and disbursements and outgoings in connection with the management and administration of the Assets and the performance of the functions and duties of the Manager under the Constitution;

- (u) all costs, charges and expenses associated with the establishment and maintenance of the Compliance Plan, compliance committee and a dispute resolution service for the Scheme; and
- (v) all costs, charges and expenses (including legal, accounting, tax, financial and other services) of establishing the Constitution including all costs of preparation, execution and stamping of this Constitution and any constitution supplemental thereto, and including the preparation, due diligence, registration, promotion and distribution of the Offer Document and the preparation, registration, distribution, due diligence and promotion of any other document prepared in respect of the Constitution, or the Scheme.

#### **14.4 Goods and Services Tax**

If any supply made by the Manager to the Members under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act:

- (a) then in addition to any amount or consideration expressed as payable to the Manager elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Manager shall be entitled to recover from the Members an additional amount on account of GST, such amount to be equal to the amount of the Manager's GST liability in respect of each supply and shall be recoverable at the same time as the amount or consideration is payable for such supply;
- (b) the Manager will review in good faith the terms of this Constitution, other than the timing of the recovery of GST, and make such amendments (if any) as are necessary to ensure that, having regard to paragraph (a), neither the Manager nor the Members are unfairly disadvantaged (nor advantaged) by the consequences of the GST and associated measures (such as the decreasing or removal of existing taxes, duties, levies and excise by the Commonwealth, State or Territory);
- (c) in the event that Members by way of ordinary resolution resolve that the amendments proposed under clause 14.3(b) are not in accordance with that clause then the changes to the arrangement will be determined by a person with expertise in goods and services tax and its application nominated by the president of the Institute of Chartered Accountants;
- (d) the Manager and the Members acknowledge and agree that each supply made by the Manager under this Constitution is made:
  - (i) on a progressive or periodic basis;
  - (ii) for consideration that is to be provided on a progressive or periodic basis; and

- (iii) each progressive or periodic component of the supply is to be treated as a separate supply.

#### **14.5 Priority**

Notwithstanding any other provision in this Constitution, Income (which unless the Manager determines otherwise will exclude capital) from the Scheme is to be applied in the following order:

- (a) payment to each Member a distribution up to their Benchmark Return;
- (b) payment of any management fee;
- (c) expenses of the Scheme; and thereafter
- (d) a further distribution to Members commensurate with the number of Interests they hold.

### **15. RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER**

#### **15.1 Retirement of the Manager**

- (a) If the Manager wants to retire, it must call a Members' meeting to explain its reason for wanting to retire and to enable the Members to vote on an extraordinary resolution to choose a new Manager.
- (b) If the Members choose a manager and that person has consented, in writing, to becoming a Scheme's Manager:
  - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to the name of the new Manager;
  - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Members to be the new Manager may lodge that notice.
- (c) If the Members do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Scheme's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

#### **15.2 Removal of the Manager by Members**

- (a) If the Members want to remove the Manager, they must take action under clause 12.2 for the calling of a Members' meeting to consider and vote on:

- (i) an extraordinary resolution that the current Manager should be removed; and
  - (ii) an extraordinary resolution choosing a person to be the new Manager.
- (b) If the Members vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Scheme's Manager:
  - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to name the person chosen as the Scheme's Manager; and
  - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Members to be the new Manager may lodge that notice.

## **16. CONSEQUENCES OF CHANGE OF MANAGER**

### **16.1 Former Manager to hand over books and provide reasonable assistance**

If the Manager of the Scheme changes, the former Manager must:

- (a) as soon as practicable give the new Manager any books in the former Manager's possession or control that the Law requires to be kept in relation to the Scheme; and
- (b) give other reasonable assistance to the new Manager to facilitate the change of manager.

### **16.2 Rights, obligations and liabilities of former Manager**

- (a) If the Manager of the Scheme changes the rights, obligations and liabilities of the former Manager in relation to the Scheme become rights, obligations and liabilities of the new Manager.
- (b) Despite paragraph (a), the following rights and liabilities remain rights and liabilities of the former Manager:
  - (i) any right of the former Manager to be paid fees for the performance of its functions before it ceased to be the manager; and
  - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manager; and
  - (iii) any right, obligation or liability that the former Manager had as a Member of the Scheme; and

- (iv) any liability for which the former Manager could not have been indemnified out of the Property if it had remained the Scheme's manager.

## **17. NOTICES**

### **17.1 Notices to be in writing**

Notices given under or for the purpose of this Constitution must be written in the English language.

### **17.2 Notices to the Manager**

Notices to the Manager may be addressed to its principal place of business as disclosed in the Offer Document or notified to Members from time to time.

### **17.3 Joint Members**

Notices to a joint Member may be addressed to the one of them whose name first appears in the Register, at that one's address shown in the Register, and may be served at that address.

### **17.4 Form of Notice**

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

### **17.5 Time of delivery**

If, before 5 p.m. local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

### **17.6 Notices by post**

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

### **17.7 Incomplete facsimile transmission**

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

### **17.8 Facsimile transmission reasonably believed to be unintelligible**

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

### **17.9 Request for re-transmission**

A party is not entitled to object to a facsimile transmission as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9 a.m. and 5 p.m. local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5 p.m. on a Business Day and is unintelligible, the receiving party has until 10 a.m. local time on the next Business Day at the place of receipt to request re-transmission.

### **17.10 Signatures**

A notice given by the Manager must be signed by an Officer of the Manager.

### **17.11 Address of Applicants**

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

### **17.12 Address of Members**

The address for service of a Member is the address shown in the Register, or in the case of joint Members, the address shown in the Register of the joint Member who is first named in the Register.

### **17.13 Changes of address for service of the Manager**

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

## **18. FINANCIAL STATEMENTS**

### **18.1 Preparation of Financial Statements (Section 292)**

A financial report and directors' report for a Scheme must be prepared for each Financial Year in accordance with the requirements of the Law.

### **18.2 Compliance with Accounting Standards and Regulations (Section 296)**

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

### **18.3 Annual Financial Report to Members (Section 314)**

- (a) The Manager must report to Members for a Financial Year by either:
  - (i) sending Members copies of:
    - (A) financial report for the year; and
    - (B) the directors' report for the year (see sections 298 - 300 of the Law); and
    - (C) the Auditors report on the financial report; or
  - (ii) sending Members a concise financial report for the year the complies with the Law.
- (b) A Scheme must report to its Members within 3 Months after the end of the Financial Year.

## **19. AUDITOR**

### **19.1 Appointment**

- (a) The Manager will appoint the Auditor and the auditor of the Compliance Plan. The appointments will be a registered company auditor according to the provisions of the Law;
- (b) The appointee may be the auditor of the Manager unless otherwise restricted by the Law.

### **19.2 Removal or Retirement of Auditor**

- (a) The Manager may remove the Auditor or auditor of the Compliance Plan at any time.
- (b) The auditors may retire after giving notice to the Manager. The auditors must give at least one Month's notice unless otherwise agreed with by the Manager.

## **20. GENERAL**

### **20.1 Payments to Members**

Any money payable by the Manager to a Member under this Constitution may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque

drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Member and a good discharge to the Manager.

## **20.2 Retention of documents**

The Manager is to retain, and make available to the auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

## **20.3 Copies of this Constitution**

A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

## **20.4 Governing law and jurisdiction**

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

## **20.5 No Waiver**

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

## **21. RESOLUTION OF DISPUTES**

### **21.1 Complaints Handling System**

The Manager shall establish a complaints handling framework that complies with the Law and the Regulations.

## 21.2 Essential Elements

The complaints handling process shall have as a minimum requirement for:

- (a) **(Recognition of complaint)** The framework shall recognise that a complaint is an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (c) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Member and the Manager.
- (d) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (e) **(Visibility).** The complaints handling process shall be well publicised to Members and staff of the Manager and shall include information to Members about the right to complain.
- (f) **(Access).** The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (g) **(Assistance).** Assistance shall be available for Members in a formulation and lodgment of complaint.
- (h) **(Responsiveness).** Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (i) **(Charges).** Complaints handling shall be at no charge to the particular complaining Member. The Manager shall be entitled to be reimbursed for its costs from Scheme assets in dealing with the particular complaints.
- (j) **(objectivity)** The Manager shall ensure complaints are treated in an equitable, objective and unbiased manner.
- (k) **(confidentiality)** The framework shall recognise that personally identifiable information about Members should be available when needed but used only to the extent necessary, and be actively protected from disclosure, unless a Member expressly consents to the disclosure.
- (l) **(customer-focused approach)** The framework shall have a customer-focused approach, facilitate the receipt and collection of feedback and foster commitment to resolving complaints which is demonstrated by the Manager's actions.

- (m) **(Remedies).** The complaints handling process shall have the capacity to determine and implement remedies.
- (n) **(Data collection).** There shall be appropriate systematic recording of complaints by Members and their outcome.
- (o) **(Systematic and recurring problems).** Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (p) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (q) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

### **21.3 Disputes between the Manager and Members**

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing (including by email) or by telephone.

### **21.4 Best Efforts to Resolve the Dispute**

- (a) On receipt of the written notice of dispute from the Member, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the board of the Manager.
- (e) The Manager's board shall meet within 21 Business Days of receipt of a written complaint by a Member, received pursuant to paragraph (d) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the board with or without legal representation and to be heard either in person or through the Member's legal representative.

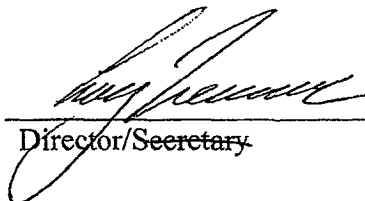
- (g) Subsequent to hearing the Member's complaint the board shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision and what avenues are available to the Member to pursue the complaint further, including referring the Member to the Dispute Resolution Service.
- (i) If the Member is dissatisfied with either:
  - (i) the dispute resolution officer's report; or
  - (ii) the determination of board or compliance committee,then the Member may refer the complaint to the Dispute Resolution Service.
- (j) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

**EXECUTED** as a Deed Poll

Signed sealed and delivered

by  
EQUITITRUST LIMITED ACN 061 383 944  
on 30 11 /2010 by:

A  \_\_\_\_\_  
Director

A  \_\_\_\_\_  
Director/Secretary

A DAVID JOHN KENNEDY  
Full name of Director

A CRAIG GRANVILLE TREASURE  
Full name of Director/Secretary

DEED POLL

*Equititrust Priority Class Income Fund*

Equititrust Limited

ACN 061 383 944

## DEED POLL

Made on 13 December 2010

---

BY **Equititrust Limited ACN 061 383 944** of 67 Thomas Drive, Chevron Island in the State of Queensland  
(**Manager**)

## BACKGROUND

- A. The Equititrust Priority Class Income Fund ('Scheme') was originally constituted as the Equitiloin Income Fund No.2 under a Deed Poll dated 9 August 1999 and has been amended from time to time by the Manager ('Constitution').
- B. Clause 20.1(b) of the Constitution provides that the Constitution may be modified or repealed and replaced by the Manager if it reasonably considers the change will not adversely affect members' rights.
- C. The Manager is satisfied the changes contemplated by this deed poll will not adversely affect Unit Holders rights.

## OPERATIVE PROVISIONS

### RESOLUTION OF DISPUTES.

1. Clause 21.4 of the Constitution is deleted in its entirety and replaced with:

#### **21.4 Best Efforts to Resolve the Dispute**

- (a) On receipt of a dispute from the Member, the Manager shall promptly reply (within 5 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member seek to finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the Manager has been unable to substantially respond to the complaint within 45 days the dispute resolution officer will report in writing to the Member advising them reasons for the delay, when a response can be expected and referring them to the external dispute resolution scheme.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

## CONFIRMATION

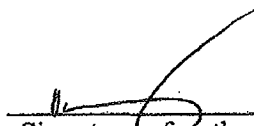
2. The Trustee confirms that, save for the amendments made by this Deed Poll, the provisions of the Constitution shall remain in full force and effect and that by such

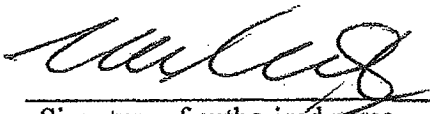
amendments the Trustee is not resettling or redeclaring the Trust nor are such amendments removing or changing the rights of Unit Holders to vote or receive distributions in respect of a Unit or Option.

#### EFFECTIVE DATE

3. In accordance with section 601 GC (2) of the Corporations Act 2001, the amendments to the Constitution contained in this Deed Poll will take effect when a copy of this Deed Poll is lodged with ASIC.

SIGNED SEALED AND DELIVERED BY )  
EQUITRUST LIMITED ACN 061 383 944 )  
in accordance with its constitution in the )  
presence of: )

^  Signature of authorised person

^  Signature of authorised person

^ DAVID JOHN KENNEDY  
Name of authorised person

^ MARK M. ZOR  
Name of authorised person

^ DIRECTOR  
Office held

^ DIRECTOR  
Office held

"DW-5"

uplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN  
089 079 854 AND THE MEMBERS OF THE EQUITITRUST  
PRIORITY CLASS INCOME FUND ARSN 089 079 729

ORDER

Before: Justice Dalton

Date: 29 February 2012

Initiating document: Application filed 24 February 2012

In this order, "**Receiver**" means Mr David Whyte, in his capacity as receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and as the person responsible for ensuring the EIF is wound up in accordance with its constitution pursuant to the Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 in these proceedings (**Orders**),

THE COURT DIRECTS THAT:

1. Without derogating in any way from the Receiver's appointment or the Receiver's powers pursuant to the Orders, the Receiver is authorised to:
  - (a) take all steps necessary to ensure the realisation of property of EIF held by Equititrust Limited as Responsible Entity of the EIF (**EL as RE of the EIF**) by exercising any legal right of EL as RE of the EIF in relation to the property, including but not limited to:
    - (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;
    - (ii) providing a response as appropriate to matters raised by receivers of property of EL as RE of the EIF to which receivers have been appointed;
    - (iii) dealing with any creditors with security over the property of the EIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;



29 FEB 2012

GADENS LAWYERS  
Level 25, 240 Queen Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201110996

- (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
- (v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above;
- (b) bring, defend or maintain any proceedings on behalf of EIF in the name of EL as is necessary for the winding up of the EIF in accordance with clause 9 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions;
- (c) take all steps necessary to effect the implementation of a NAB bank guarantee facility and the replacement of the existing CBA bank guarantee facilities including:
  - (i) providing instructions to solicitors as are necessary to negotiate and finalise the facilities and/or the security documentation required for a replacement bank guarantee facility from the NAB and the repayment of the CBA facilities and the release of any security held by the CBA;
  - (ii) dealing with NAB and CBA direct to provide for the replacement of the bank guarantees and finalise the documentation in relation to same; and
  - (iii) executing any and all facility and/or security documentation on behalf of EL as RE of the EIF or all such other legal documents as are necessary to ensure the security documentation is finalised and the CBA bank guarantee facilities replaced by the NAB bank guarantee facility.

THE ORDER OF THE COURT IS THAT:

2. That the parties appearing on this application, save for ASIC, the National Australia Bank and the receivers Messrs Colwell and Moloney, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.

Signed:



DEPUTY REGISTRAR

# ASIC & Business Names

## ORGANISATIONAL SEARCH ON EQUITITRUST LIMITED

### Historical Extract

This information was extracted from ASIC database on 19 February 2015 at 10:43AM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

|                    |                            |                     |
|--------------------|----------------------------|---------------------|
| <b>061 383 944</b> | <b>EQUITITRUST LIMITED</b> | <b>DOCUMENT NO.</b> |
|                    | 061 383 944                |                     |
| ABN                | 74 061 383 944             |                     |
| Registered in      | QLD                        |                     |
| Date Registered    | 18-Aug-1993                |                     |
| Review Date        | 18-Aug-2015                |                     |

### Current Organisation Details

|                   |  |           |
|-------------------|--|-----------|
| Name              | EQUITITRUST LIMITED  | 7E4277681 |
| Name Start        | 25-Jan-2002  |           |
| Status            | EXTERNALLY ADMINISTERED  |           |
|                   | For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below. |           |
| Type              | AUSTRALIAN PUBLIC COMPANY  |           |
| Class             | LIMITED BY SHARES  |           |
| Subclass          | UNLISTED PUBLIC COMPANY  |           |
| Disclosing Entity | NO   |           |

### Ceased/Former Organisation Details

|                   |                           |           |
|-------------------|---------------------------|-----------|
| Details Start     | 25-Jan-2002               | 015946604 |
| Details End       | 14-Feb-2012               |           |
| Name              | EQUITITRUST LIMITED       |           |
| Name Start        | 25-Jan-2002               |           |
| Status            | REGISTERED                |           |
| Type              | AUSTRALIAN PUBLIC COMPANY |           |
| Class             | LIMITED BY SHARES         |           |
| Subclass          | UNLISTED PUBLIC COMPANY   |           |
| Disclosing Entity | NO                        |           |
| Details Start     | 22-Oct-1996               |           |
| Details End       | 24-Jan-2002               |           |
| Name              | EQUITILOAN LTD            |           |
| Name Start        | 11-Apr-1994               |           |
| Status            | REGISTERED                |           |

Type AUSTRALIAN PUBLIC COMPANY  
 Class LIMITED BY SHARES  
 Subclass UNLISTED PUBLIC COMPANY  
 Disclosing Entity NO

Details Start 28-Sep-1996  
 Details End 21-Oct-1996  
 Name EQUITILOAN LTD  
 Name Start 11-Apr-1994  
 Status STRIKE-OFF ACTION IN PROGRESS  
 Type AUSTRALIAN PUBLIC COMPANY  
 Class LIMITED BY SHARES  
 Subclass UNLISTED PUBLIC COMPANY  
 Disclosing Entity NO

Details Start 11-Apr-1994 005257655  
 Details End 27-Sep-1996  
 Name EQUITILOAN LTD  
 Name Start 11-Apr-1994  
 Status REGISTERED  
 Type AUSTRALIAN PUBLIC COMPANY  
 Class LIMITED BY SHARES  
 Subclass UNLISTED PUBLIC COMPANY  
 Disclosing Entity NO

Details Start 11-Mar-1994 005261696  
 Details End 10-Apr-1994  
 Name EQUITILOAN PTY LTD  
 Name Start 11-Mar-1994  
 Status REGISTERED  
 Type AUSTRALIAN PROPRIETARY COMPANY  
 Class LIMITED BY SHARES  
 Subclass EXEMPT PROPRIETARY COMPANY  
 Disclosing Entity NO

Details Start 18-Aug-1993 004329320  
 Details End 10-Mar-1994  
 Name M C MORTGAGE MANAGEMENT PTY LTD  
 Name Start 18-Aug-1993  
 Status REGISTERED  
 Type AUSTRALIAN PROPRIETARY COMPANY  
 Class LIMITED BY SHARES  
 Subclass EXEMPT PROPRIETARY COMPANY  
 Disclosing Entity NO

#### Current Registered Office

Address 65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217 015950413  
 Start Date 12-May-2000

**Ceased/Former Registered Office**

|            |   |           |
|------------|---|-----------|
| Address    | PKF WORLDWIDE, 'LEVEL 4, WATERSIDE EAST', HOLDEN PLACE, BUNDALL, QLD, 4217                    | 014891088 |
| Start Date | 01-Dec-1999   |           |
| End Date   | 11-May-2000   |           |
| Address    | PANNELL KERR FORSTER, LEVEL 4 TOWER 1 WATERSIDE OFFICE PARK, HOLDEN PLACE, BUNDALL, QLD, 4217 | 06138394I |
| Start Date | 18-Jun-1997   | (AR 1998) |
| End Date   | 30-Nov-1999   |           |
| Address    | LEVEL 1, 65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217                                      | 005246398 |
| Start Date | 21-Jun-1994   |           |
| End Date   | 17-Jun-1997   |           |
| Address    | MCIVOR COGHLAN SOLICITORS, 1150 GOLD COAST HIGHWAY, PALM BEACH, QLD, 4221                     | 005947086 |
| Start Date | 27-Oct-1993   |           |
| End Date   | 20-Jun-1994   |           |
| Address    | C/- TOP SHELF COMPANY SERVICES, SUITE 1, 31 CROMBIE AVENUE, BUNDALL, QLD, 4217                | 004329320 |
| Start Date | 18-Aug-1993   |           |
| End Date   | 26-Oct-1993   |           |

**Current Principal Place of Business**

|            |   |           |
|------------|---|-----------|
| Address    | 65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217 | 06138394G |
| Start Date | 11-Jun-1997                                     | (AR 1996) |

**Ceased/Former Principal Place of Business**

|            |   |           |
|------------|---|-----------|
| Address    | 65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217                           | 011666628 |
| Start Date | 10-Oct-1996   | (AR 1995) |
| End Date   | 10-Jun-1997   |           |
| Address    | MCIVOR COGHLAN SOLICITORS, 1150 GOLD COAST HIGHWAY, PALM BEACH, QLD, 4221 | 06138394Z |
| Start Date | 31-Dec-1994   | (AR 1994) |
| End Date   | 09-Oct-1996   |           |

**Ceased/Former Principal Executive Officer**

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | MARK MCIVOR                              | 009156517 |
| ABN              | Not available                            |           |
| Birth Details    | 27-Mar-1956 DALBY QLD                    |           |
| Address          | 67 JEFFERSON LANE, PALM BEACH, QLD, 4221 |           |
| Appointment Date | 15-May-1995                              |           |
| Cease Date       | 08-Dec-1995                              |           |

**Current Director**

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | ROSS JAMES HONEYMAN                                    | 7E4106959 |
| ABN              | Not available  |           |
| Birth Details    | 02-Apr-1957 SYDNEY NSW                                 |           |
| Address          | UNIT 13, 3508 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217 |           |
| Appointment Date | 21-Nov-2011  |           |
| Officer Name     | MARK MCIVOR  | 7E4106959 |
| ABN              | Not available  |           |
| Birth Details    | 27-Mar-1956 DALBY QLD                                  |           |
| Address          | 1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217      |           |
| Appointment Date | 21-Nov-2011  |           |
| Officer Name     | DAVID HICKIE   | 7E4245817 |
| ABN              | Not available  |           |
| Birth Details    | 21-Sep-1951 MELBOURNE VIC                              |           |
| Address          | UNIT 5, 78 QUEEN ROAD, MELBOURNE, VIC, 3004            |           |
| Appointment Date | 12-Jan-2012  |           |

**Ceased/Former Director**

|                  |   |           |
|------------------|---|-----------|
| Officer Name     | STACEY BLYTHE MCIVOR                                    | 7E4106959 |
| ABN              | Not available   |           |
| Birth Details    | 02-Mar-1971 SYDNEY NSW                                  |           |
| Address          | 1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217       |           |
| Appointment Date | 21-Nov-2011   |           |
| Cease Date       | 16-Dec-2011   |           |
| Officer Name     | JEFFREY IAN MCDERMID                                    | 7E4034319 |
| ABN              | Not available   |           |
| Birth Details    | 05-Feb-1951 BANGALOW NSW                                |           |
| Address          | UNIT 2604, 159 OLD BURLEIGH ROAD, BROADBEACH, QLD, 4218 |           |
| Appointment Date | 17-Oct-2011   |           |
| Cease Date       | 21-Nov-2011   |           |
| Officer Name     | TROY BINGHAM  | 7E4034319 |
| ABN              | Not available   |           |
| Birth Details    | 17-Jan-1969 DURBAN SOUTH AFRICA                         |           |
| Address          | 12 PORTOBELLO DRIVE, MERMAID WATERS, QLD, 4218          |           |
| Appointment Date | 12-Oct-2011   |           |
| Cease Date       | 21-Nov-2011   |           |
| Officer Name     | WARWICK POWELL  | 7E4034319 |
| ABN              | Not available   |           |
| Birth Details    | 01-Nov-1969 HONG KONG CHINA                             |           |
| Address          | 69-77 KILLIGREW ROAD, TAMBORINE, QLD, 4270              |           |
| Appointment Date | 11-Oct-2011   |           |

|                  |  |           |
|------------------|--|-----------|
| Cease Date       | 21-Nov-2011                                    |           |
| Officer Name     | PAUL JAMES VINCENT                             | 7E4044308 |
| ABN              | Not available                                  |           |
| Birth Details    | 06-Apr-1957 BRISBANE QLD                       |           |
| Address          | 15 MCGREGOR STREET, CLAYFIELD, QLD, 4011       |           |
| Appointment Date | 24-Oct-2011                                    |           |
| Cease Date       | 21-Nov-2011                                    |           |
| Officer Name     | JOHN ALEXANDER GODDARD                         | 7E3283588 |
| ABN              | Not available                                  |           |
| Birth Details    | 14-Jun-1950 SYDNEY NSW                         |           |
| Address          | 3 ELLWOOD COURT, HIGHVALE, QLD, 4520           |           |
| Appointment Date | 12-Oct-2010                                    |           |
| Cease Date       | 17-Oct-2011                                    |           |
| Officer Name     | DAVID JOHN SANDFORD JACKSON                    | 7E3844445 |
| ABN              | Not available                                  |           |
| Birth Details    | 02-Feb-1955 BRISBANE QLD                       |           |
| Address          | 23 KAMBER STREET, BARDON, QLD, 4065            |           |
| Appointment Date | 28-Jul-2011                                    |           |
| Cease Date       | 17-Oct-2011                                    |           |
| Officer Name     | CRAIG GRANVILLE TREASURE                       | 7E3283613 |
| ABN              | Not available                                  |           |
| Birth Details    | 21-Dec-1962 BRISBANE QLD                       |           |
| Address          | 3018 THE BOULEVARDE, BENOWA, QLD, 4217         |           |
| Appointment Date | 12-Oct-2010                                    |           |
| Cease Date       | 16-Oct-2011                                    |           |
| Officer Name     | HARVEY PARKER                                  | 7E4034319 |
| ABN              | Not available                                  |           |
| Birth Details    | 16-Nov-1943 MACKAY QLD                         |           |
| Address          | 76 WOODSIDE AVENUE, FRANKSTON, VIC, 3199       |           |
| Appointment Date | 11-Oct-2011                                    |           |
| Cease Date       | 12-Oct-2011                                    |           |
| Officer Name     | DAVID ROBERT WALTER TUCKER                     | 7E3191967 |
| ABN              | Not available                                  |           |
| Birth Details    | 23-Oct-1967 MELBOURNE VIC                      |           |
| Address          | 29 SASSAFRAS STREET, THE GAP, QLD, 4061        |           |
| Appointment Date | 03-Sep-2010                                    |           |
| Cease Date       | 11-Oct-2011                                    |           |
| Officer Name     | DAVID JOHN KENNEDY                             | 7E3099509 |
| ABN              | Not available                                  |           |
| Birth Details    | 24-Dec-1968 BRISBANE QLD                       |           |
| Address          | 3 SIR BRUCE SMALL BOULEVARD, BENOWA, QLD, 4217 |           |
| Appointment Date | 14-May-2010                                    |           |
| Cease Date       | 14-Jun-2011                                    |           |

|                  |   |           |
|------------------|---|-----------|
| Officer Name     | MARK MCIVOR                                       | 1F0208790 |
| ABN              | Not available                                     |           |
| Birth Details    | 27-Mar-1956 DALBY QLD                             |           |
| Address          | 1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217 |           |
| Appointment Date | 01-Jul-1995                                       |           |
| Cease Date       | 13-Jun-2011                                       |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | THOMAS JOHN HANEY                                | 015943136 |
| ABN              | Not available                                    |           |
| Birth Details    | 01-Dec-1956 MOUNT ISA QLD                        |           |
| Address          | 25 MIDSHIPMAN COURT, SURFERS PARADISE, QLD, 4217 |           |
| Appointment Date | 03-Jul-2000                                      |           |
| Cease Date       | 03-Sep-2010                                      |           |

|                  |   |           |
|------------------|---|-----------|
| Officer Name     | WAYNE MCIVOR                                    | 7E2388579 |
| ABN              | Not available                                   |           |
| Birth Details    | 07-May-1954 WARWICK QLD                         |           |
| Address          | 79 RIVER CRESCENT, BROADBEACH WATERS, QLD, 4218 |           |
| Appointment Date | 10-Aug-2000                                     |           |
| Cease Date       | 14-May-2010                                     |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | LESLIE WAYNE PETERS  | 014228497 |
| ABN              | Not available  |           |
| Birth Details    | 25-Dec-1959 HUGHENDEN QLD  |           |
| Address          | UNIT A10-3 RIVAGE ROYALE, 75 BRIGHTON PARADE, SOUTHPORT, QLD, 4215 |           |
| Appointment Date | 15-Sep-1999  |           |
| Cease Date       | 10-Aug-2000  |           |

|                  |                                  |           |
|------------------|----------------------------------|-----------|
| Officer Name     | MARK THOMAS DIXON                | 014228497 |
| ABN              | Not available                    |           |
| Birth Details    | 24-Apr-1956 GYMPIE QLD           |           |
| Address          | 9 HYTHE STREET, MIAMI, QLD, 4220 |           |
| Appointment Date | 15-Sep-1999                      |           |
| Cease Date       | 03-Jul-2000                      |           |

|                  |   |           |
|------------------|---|-----------|
| Officer Name     | JOHN LEONARD BENNETTS   | 013833932 |
| ABN              | Not available   |           |
| Birth Details    | 07-Dec-1962 BRISBANE QLD  |           |
| Address          | UNIT 23 CARRINGTON CRT, 3576 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217 |           |
| Appointment Date | 10-Mar-1998   |           |
| Cease Date       | 15-Sep-1999   |           |

|                  |   |           |
|------------------|---|-----------|
| Officer Name     | WAYNE MCIVOR  | 06138394H |
| ABN              | Not available   | (AR 1997) |
| Birth Details    | 07-May-1954 WARWICK QLD   |           |
| Address          | UNIT 124 GRAND MARINER, 12 COMMODORE DRIVE, SURFERS PARADISE, QLD, 4217 |           |
| Appointment Date | 18-Aug-1993   |           |

|                  |   |           |
|------------------|---|-----------|
| Cease Date       | 15-Sep-1999                                     |           |
| Officer Name     | KERRY ARTHUR O'MEARA                            | 011680137 |
| ABN              | Not available                                   |           |
| Birth Details    | 24-May-1958 ROTORUA NEW ZEALAND                 |           |
| Address          | 92 AMALFI DRIVE, SURFERS PARADISE, QLD, 4217    |           |
| Appointment Date | 28-Nov-1996                                     |           |
| Cease Date       | 10-Mar-1998                                     |           |
| Officer Name     | ROSS DONALD JANETZKI                            | 005257634 |
| ABN              | Not available                                   |           |
| Birth Details    | 25-Jun-1968 PRAHRAN VIC                         |           |
| Address          | UNIT 5, 28 PANORAMA DRIVE, CURRUMBIN, QLD, 4223 |           |
| Appointment Date | 23-Feb-1994                                     |           |
| Cease Date       | 28-Nov-1996                                     |           |
| Officer Name     | JOHN RICHARD MCIVOR                             | 005947087 |
| ABN              | Not available                                   |           |
| Birth Details    | 07-May-1930 WARWICK QLD                         |           |
| Address          | 2 RAZORBACK ROAD, TWEED HEADS, NSW, 2485        |           |
| Appointment Date | 18-Aug-1993                                     |           |
| Cease Date       | 01-Jul-1995                                     |           |
| Officer Name     | FROLA SHANEENE GILLTRAP                         | 004329337 |
| ABN              | Not available                                   |           |
| Birth Details    | 19-May-1949 BRISBANE QLD                        |           |
| Address          | 16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221         |           |
| Appointment Date | 18-Aug-1993                                     |           |
| Cease Date       | 18-Aug-1993                                     |           |
| Officer Name     | GEORGE STEPHENSON GILLTRAP                      | 004329337 |
| ABN              | Not available                                   |           |
| Birth Details    | 20-Feb-1949 ROTORUA NEW ZEALAND                 |           |
| Address          | 16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221         |           |
| Appointment Date | 18-Aug-1993                                     |           |
| Cease Date       | 18-Aug-1993                                     |           |

#### **Current Secretary**

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | ROSS JAMES HONEYMAN                                    | 7E4034319 |
| ABN              | Not available  |           |
| Birth Details    | 02-Apr-1957 SYDNEY NSW                                 |           |
| Address          | UNIT 13, 3508 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217 |           |
| Appointment Date | 17-Oct-2011  |           |

#### **Ceased/Former Secretary**

|               |                          |           |
|---------------|--------------------------|-----------|
| Officer Name  | DAVID JOHN KENNEDY       | 7E3737048 |
| ABN           | Not available            |           |
| Birth Details | 24-Dec-1969 BRISBANE QLD |           |

|                  |   |           |
|------------------|---|-----------|
| Address          | 3 SIR BRUCE SMALL BOULEVARD, BENOWA, QLD, 4217                          |           |
| Appointment Date | 14-Jun-2011   |           |
| Cease Date       | 17-Oct-2011   |           |
| Officer Name     | SIDNEY SUPER  | 7E2388579 |
| ABN              | Not available   |           |
| Birth Details    | 29-Jan-1956 DURBAN SOUTH AFRICA   |           |
| Address          | '48 DEVILLE APARTMENTS', 3645 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217  |           |
| Appointment Date | 16-Jan-2004   |           |
| Cease Date       | 01-Jul-2011   |           |
| Officer Name     | LYNDELL RUTH EASTON   | 06138394M |
| ABN              | Not available   | (AR 2002) |
| Birth Details    | 17-Dec-1962 NARRABRI NSW  |           |
| Address          | UNIT 1, 21 VENICE STREET, MERMAID BEACH, QLD, 4218                      |           |
| Appointment Date | 15-Sep-1999   |           |
| Cease Date       | 15-Jan-2004   |           |
| Officer Name     | WAYNE MCIVOR  | 06138394H |
| ABN              | Not available   | (AR 1997) |
| Birth Details    | 07-May-1954 WARWICK QLD   |           |
| Address          | UNIT 124 GRAND MARINER, 12 COMMODORE DRIVE, SURFERS PARADISE, QLD, 4217 |           |
| Appointment Date | 18-Aug-1993   |           |
| Cease Date       | 15-Sep-1999   |           |
| Officer Name     | GEORGE STEPHENSON GILLTRAP  | 004329336 |
| ABN              | Not available   |           |
| Birth Details    | 20-Feb-1949 ROTORUA NEW ZEALAND   |           |
| Address          | 16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221                                 |           |
| Appointment Date | 18-Aug-1993   |           |
| Cease Date       | 18-Aug-1993   |           |

#### Current Appointed Auditor

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | KPMG   | 024300137 |
| Number           | 024510530  | (FR 2007) |
| ABN              | Not available  |           |
| Address          | 'CORPORATE CENTRE ONE LEVEL 11', CNR BUNDALL & SLATER AVENUE, BUNDALL, QLD, 4217 |           |
| Appointment Date | 06-Jun-2001  |           |

#### Ceased/Former Appointed Auditor

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | PRICEWATERHOUSECOOPERS   | 015497012 |
| Number           | 083013423  | (FR 1999) |
| ABN              | Not available  |           |
| Address          | LEVEL 11 WATERFRONT PLACE, 1 EAGLE STREET, BRISBANE, QLD, 4000 |           |
| Appointment Date | 31-Dec-1994  |           |

Cease Date 28-Jun-2001

#### Current Receiver Manager

Officer Name WILLIAM MARTIN COLWELL 7E4286099  
ABN Not available  
Address FERRIER HODGSON (QLD), ROYAL & SUN ALLIANCE  
BUILDING LEVEL 7, 145 EAGLE STREET, BRISBANE, QLD,  
4000  
Appointment Date 16-Feb-2012

Officer Name GREGORY MICHAEL MOLONEY 7E4286099  
ABN Not available  
Address FERRIER HODGSON (QLD), LEVEL 7, 145 EAGLE STREET,  
BRISBANE, QLD, 4000  
Appointment Date 16-Feb-2012

Officer Name MICHAEL RICHARD PELDAN 7E4686885  
ABN Not available  
Address LEVEL 8, 102 ADELAIDE STREET, BRISBANE, QLD, 4000  
Appointment Date 27-Aug-2012

Officer Name CHRISTOPHER RICHARD COOK 7E4686885  
ABN Not available  
Address LEVEL 8, 102 ADELAIDE STREET, BRISBANE, QLD, 4000  
Appointment Date 27-Aug-2012

#### Ceased/Former Receiver Manager

Officer Name WILLIAM JAMES HARRIS 028033519  
ABN Not available  
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,  
QLD, 4000  
Appointment Date 21-Feb-2012  
Cease Date 27-Aug-2012

Officer Name JOSEPH DAVID HAYES 028033519  
ABN Not available  
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,  
QLD, 4000  
Appointment Date 21-Feb-2012  
Cease Date 27-Aug-2012

Officer Name JOHN PATRICK CRONIN 028033519  
ABN Not available  
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,  
QLD, 4000  
Appointment Date 21-Feb-2012  
Cease Date 27-Aug-2012

#### Current Petitioner Court Action

|                              |   |                             |
|------------------------------|---|-----------------------------|
| Officer Name                 | IAN DAVID LAZAR                           | 027770829                   |
| ABN                          | Not available                             |                             |
| Address                      | 4 MOROTAI CRESCENT, CASTLECRAG, NSW, 2068 |                             |
| Appointment Date             | 21-Sep-2011                               |                             |
| Court details affecting role |   |                             |
| Court Type                   | Federal                                   | Court State New South Wales |
| Court application No         | 1614                                      | Court application year 2011 |

**Current Appointed Liquidator (Creditors Voluntary Winding up)**

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | BLAIR ALEXANDER PLEASH                                       | 7E5846751 |
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 20-Apr-2012  |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | BLAIR ALEXANDER PLEASH                                       | 7E5846751 |
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 20-Apr-2012  |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | RICHARD ALBARRAN   | 7E5846853 |
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 20-Apr-2012  |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | RICHARD ALBARRAN   | 7E5846853 |
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 20-Apr-2012  |           |

**Ceased/Former Appointed Liquidator (Creditors Voluntary Winding up)**

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | GLEN PETER OLDHAM                                | 7E4412884 |
| ABN              | Not available                                    |           |
| Address          | LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000 |           |
| Appointment Date | 20-Apr-2012                                      |           |
| Cease Date       | 17-Jul-2013                                      |           |

|                  |  |           |
|------------------|--|-----------|
| Officer Name     | GLEN PETER OLDHAM                                | 7E4412913 |
| ABN              | Not available                                    |           |
| Address          | LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000 |           |
| Appointment Date | 20-Apr-2012                                      |           |
| Cease Date       | 17-Jul-2013                                      |           |

**Ceased/Former Administrator of a Company Under Administration**

|              |                  |           |
|--------------|------------------|-----------|
| Officer Name | RICHARD ALBARRAN | 7E4277681 |
|--------------|------------------|-----------|

|                  |  |           |
|------------------|--|-----------|
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31<br>MARKET STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 15-Feb-2012  |           |
| Cease Date       | 20-Apr-2012  |           |
| Officer Name     | BLAIR ALEXANDER PLEASH   | 7E4277681 |
| ABN              | Not available  |           |
| Address          | HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31<br>MARKET STREET, SYDNEY, NSW, 2000 |           |
| Appointment Date | 15-Feb-2012  |           |
| Cease Date       | 20-Apr-2012  |           |
| Officer Name     | GLEN PETER OLDHAM  | 7E4277681 |
| ABN              | Not available  |           |
| Address          | LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000                                   |           |
| Appointment Date | 15-Feb-2012  |           |
| Cease Date       | 20-Apr-2012  |           |

#### Current Issued Capital

|                                    |                 |           |
|------------------------------------|-----------------|-----------|
| Type                               | Current         | 06138394G |
| Class                              | ORD             | (AR 1996) |
|                                    | ORDINARY SHARES |           |
| Number of Shares/Interests issued  | 500             |           |
| Total amount paid/taken to be paid | \$4097385.00    |           |
| Total amount due and payable       | \$0.00          |           |

#### Ceased/Former Issued Capital

|                                    |                |           |
|------------------------------------|----------------|-----------|
| Type                               | Ceased/Former  | 1F0077488 |
| Class                              | C              |           |
|                                    | CLASS C SHARES |           |
| Number of Shares/Interests issued  | 1              |           |
| Total amount paid/taken to be paid | \$1.00         |           |
| Total amount due and payable       | \$0.00         |           |

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

#### Documents Relating to External Administration and/or Appointment

This extract may not list all documents relating to this status. State and territory records should be searched.

| Received    | Form Type  | Processed   | No. Pages | Effective   |           |
|-------------|--|-------------|-----------|-------------|-----------|
| 13-Nov-2014 | 524  | 13-Nov-2014 | 10        | 19-Oct-2014 | 7E6519562 |
| 524J        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP |             |           |             |           |

|             |   |             |    |             |           |
|-------------|---|-------------|----|-------------|-----------|
| 12-Sep-2014 | 524   | 12-Sep-2014 | 11 | 15-Aug-2014 | 7E6363601 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 27-Aug-2014 | 524   | 27-Aug-2014 | 11 | 26-Aug-2014 | 7E6320910 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 19-May-2014 | 524   | 19-May-2014 | 11 | 19-Apr-2014 | 7E6058531 |
| 524J        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF<br>CREDITORS'<br>VOLUNTARY WINDING UP  |             |    |             |           |
| 25-Mar-2014 | 524   | 25-Mar-2014 | 12 | 26-Feb-2014 | 7E5935182 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 07-Mar-2014 | 524   | 07-Mar-2014 | 11 | 15-Feb-2014 | 7E5891185 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 18-Feb-2014 | 506   | 18-Feb-2014 | 7  | 18-Feb-2014 | 7E5846853 |
| 506L        | NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF<br>ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)                                 |             |    |             |           |
| 18-Feb-2014 | 506   | 18-Feb-2014 | 7  | 18-Feb-2014 | 7E5846853 |
| 506L        | NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF<br>ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)                                 |             |    |             |           |
| 18-Feb-2014 | 506   | 18-Feb-2014 | 7  | 18-Feb-2014 | 7E5846751 |
| 506L        | NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF<br>ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)                                 |             |    |             |           |
| 18-Feb-2014 | 506   | 18-Feb-2014 | 7  | 18-Feb-2014 | 7E5846751 |
| 506L        | NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF<br>ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)                                 |             |    |             |           |
| 29-Nov-2013 | 5011  | 29-Nov-2013 | 3  | 21-Nov-2013 | 7E5683783 |
| 5011A       | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 18-Nov-2013 | 524   | 18-Nov-2013 | 11 | 19-Oct-2013 | 7E5654848 |
| 524J        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF<br>CREDITORS'<br>VOLUNTARY WINDING UP  |             |    |             |           |
| 10-Sep-2013 | 524   | 10-Sep-2013 | 11 | 15-Aug-2013 | 7E5501261 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 04-Sep-2013 | 524   | 04-Sep-2013 | 22 | 26-Aug-2013 | 7E5486813 |

|                      |   |             |    |             |           |
|----------------------|---|-------------|----|-------------|-----------|
| 524N                 | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 26-Aug-2013<br>1500  | 1500  | 12-Nov-2013 | 18 | 22-Aug-2013 | 028646601 |
|                      | ANNUAL REPORT TO CREDITORS  |             |    |             |           |
| 30-Jul-2013<br>5011A | 5011  | 30-Jul-2013 | 6  | 19-Jul-2013 | 7E5405281 |
|                      | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 30-Jul-2013<br>5011A | 5011  | 30-Jul-2013 | 4  | 26-Jul-2013 | 7E5405273 |
|                      | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 17-Jul-2013<br>505R  | 505   | 17-Jul-2013 | 2  | 17-Jul-2013 | 7E5377606 |
|                      | NOTIFICATION OF RESIGNATION OR REMOVAL OF<br>LIQUIDATOR/PROVISIONAL LIQUIDATOR  |             |    |             |           |
| 20-May-2013<br>524J  | 524   | 20-May-2013 | 11 | 19-Apr-2013 | 7E5229723 |
|                      | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF<br>CREDITORS'<br>VOLUNTARY WINDING UP  |             |    |             |           |
| 16-May-2013<br>5011A | 5011  | 16-May-2013 | 8  | 18-Apr-2013 | 7E5221441 |
|                      | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 16-May-2013<br>5011A | 5011  | 16-May-2013 | 3  | 16-Apr-2013 | 7E5221439 |
|                      | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 12-Mar-2013<br>524N  | 524   | 12-Mar-2013 | 11 | 26-Feb-2013 | 7E5081061 |
|                      | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 11-Mar-2013<br>524N  | 524   | 11-Mar-2013 | 8  | 15-Feb-2013 | 7E5076287 |
|                      | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER   |             |    |             |           |
| 21-Jan-2013<br>5011A | 5011  | 21-Jan-2013 | 7  | 21-Dec-2012 | 7E4970710 |
|                      | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A |             |    |             |           |
| 19-Nov-2012<br>524J  | 524   | 19-Nov-2012 | 8  | 19-Oct-2012 | 7E4857222 |
|                      | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF<br>CREDITORS'<br>VOLUNTARY WINDING UP  |             |    |             |           |
| 16-Oct-2012          | 507   | 16-Oct-2012 | 11 | 16-Feb-2012 | 7E4785713 |

|             |  |             |    |             |           |
|-------------|--|-------------|----|-------------|-----------|
| 507G        | REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO<br>A<br>RECEIVER/MANAGER   |             |    |             |           |
| 21-Sep-2012 | 507  | 21-Sep-2012 | 11 | 27-Aug-2012 | 7E4733772 |
| 507G        | REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO<br>A<br>RECEIVER/MANAGER   |             |    |             |           |
| 17-Sep-2012 | 524  | 28-Sep-2012 | 9  | 20-Aug-2012 | 028211192 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER  |             |    |             |           |
| 17-Sep-2012 | 524  | 28-Sep-2012 | 6  | 27-Aug-2012 | 028211191 |
| 524P        | PRESENTATION OF ACCOUNTS & STATEMENT FINAL ACCOUNTS OF<br>RECEIVER & MANAGER<br>Altered by 028 749 955   |             |    |             |           |
| 03-Sep-2012 | 524  | 03-Sep-2012 | 11 | 15-Aug-2012 | 7E4693473 |
| 524N        | PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER<br>&<br>MANAGER  |             |    |             |           |
| 30-Aug-2012 | 504  | 30-Aug-2012 | 4  | 27-Aug-2012 | 028216061 |
| 504B        | NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER  |             |    |             |           |
| 30-Aug-2012 | 505  | 30-Aug-2012 | 2  | 27-Aug-2012 | 7E4686885 |
| 505B        | NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER  |             |    |             |           |
| 28-Aug-2012 | 505  | 28-Aug-2012 | 2  | 27-Aug-2012 | 7E4681504 |
| 505L        | NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT  |             |    |             |           |
| 25-May-2012 | 5011   | 25-May-2012 | 19 | 20-Apr-2012 | 7E4478241 |
| 5011B       | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR<br>S.439A<br>Altered by 028 468 193 |             |    |             |           |
| 08-May-2012 | 5011   | 08-May-2012 | 5  | 16-Apr-2012 | 7E4441212 |
| 5011A       | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER<br>S.436E OR S.439A                |             |    |             |           |
| 02-May-2012 | 524  | 02-May-2012 | 8  | 20-Apr-2012 | 7E4428908 |
| 524Z        | PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL<br>ACCOUNTS OF ADMINISTRATOR  |             |    |             |           |
| 24-Apr-2012 | 505  | 24-Apr-2012 | 2  | 20-Apr-2012 | 7E4412932 |
| 505Y        | NOTIFICATION OF RESIGNATION OR REMOVAL OF ADMINISTRATOR OF<br>COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C                           |             |    |             |           |
| 24-Apr-2012 | 505  | 24-Apr-2012 | 2  | 20-Apr-2012 | 7E4412913 |
| 505J        | NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS'<br>VOLUNTARY WINDING UP)   |             |    |             |           |
| 24-Apr-2012 | 509D   | 24-Apr-2012 | 2  | 20-Apr-2012 | 7E4412884 |

509DA NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP  
COMPANY  
RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)

|             |  |             |    |             |           |
|-------------|--|-------------|----|-------------|-----------|
| 02-Apr-2012 | 5011   | 02-Apr-2012 | 44 | 27-Feb-2012 | 7E4374020 |
| 5011B       | COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,<br>CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR<br>S.439A |             |    |             |           |
| 22-Mar-2012 | 507  | 10-Apr-2012 | 8  | 21-Feb-2012 | 028013819 |
| 507G        | REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO<br>A<br>RECEIVER/MANAGER                                       |             |    |             |           |
| 24-Feb-2012 | 504  | 27-Feb-2012 | 4  | 16-Feb-2012 | 028033729 |
| 504B        | NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER  |             |    |             |           |
| 22-Feb-2012 | 505  | 24-Feb-2012 | 3  | 21-Feb-2012 | 028016776 |
| 505B        | NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER  |             |    |             |           |
| 22-Feb-2012 | 504  | 23-Feb-2012 | 4  | 21-Feb-2012 | 028033519 |
| 504B        | NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER  |             |    |             |           |
| 20-Feb-2012 | 505  | 20-Feb-2012 | 2  | 16-Feb-2012 | 7E4286099 |
| 505B        | NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER  |             |    |             |           |
| 15-Feb-2012 | 505  | 15-Feb-2012 | 2  | 15-Feb-2012 | 7E4277681 |
| 505U        | NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B,<br>436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)             |             |    |             |           |
| 03-Oct-2011 | 519  | 21-Nov-2011 | 3  | 21-Sep-2011 | 027770829 |
| 519A        | NOTIFICATION OF FILING OF APPLICATION FOR WINDING UP ORDER   |             |    |             |           |
| 09-May-2011 | 519  | 09-May-2011 | 3  | 06-May-2011 | 027527066 |
| 519C        | NOTIFICATION OF DISMISSAL OF APPLICATION FOR WINDING UP<br>ORDER   |             |    |             |           |

#### Charges

|                    |                       |                 |           |
|--------------------|-----------------------|-----------------|-----------|
| ASIC Charge Number | 470140                | Charge status   | Satisfied |
| Date registered    | 13-Dec-1994           | Time registered | 10:15:00  |
| Charge type        | Both Fixed & Floating |                 |           |
| Date Created       | 08-Dec-1994           |                 |           |

**Chargee**                      **NATIONAL AUSTRALIA BANK LIMITED**  
004 044 937

| Lodged      | Form Type       | Processed   | No. Pages |           |
|-------------|-----------------|-------------|-----------|-----------|
| 11-Dec-2002 | 312             | 11-Dec-2002 | 1         | 018191480 |
| 312         | NOTIFICATION OF |             |           |           |
| 312A        | DISCHARGE       |             |           |           |

|                    |                       |                 |           |
|--------------------|-----------------------|-----------------|-----------|
| ASIC Charge Number | 909111                | Charge status   | Satisfied |
| Date registered    | 11-Dec-2002           | Time registered | 10:42:00  |
| Charge type        | Both Fixed & Floating |                 |           |
| Date Created       | 05-Dec-2002           |                 |           |

**Chargee** **CAPITAL FINANCE AUSTRALIA LIMITED**  
069 663 136

| Lodged      | Form Type       | Processed   | No. Pages |           |
|-------------|-----------------|-------------|-----------|-----------|
| 04-Jun-2007 | 312             | 08-Jun-2007 | 1         | 023773940 |
| 312         | NOTIFICATION OF |             |           |           |
| 312A        | DISCHARGE       |             |           |           |

ASIC Charge Number 1066324 Charge status Satisfied  
Date registered 28-Jul-2004 Time registered 15:30:00  
Charge type Both Fixed & Floating  
Date Created 28-Jul-2004

**Chargee** **COMMONWEALTH BANK OF AUSTRALIA**  
123 123 124

| Lodged      | Form Type       | Processed   | No. Pages |           |
|-------------|-----------------|-------------|-----------|-----------|
| 03-Sep-2004 | 312             | 03-Sep-2004 | 1         | 020494250 |
| 312         | NOTIFICATION OF |             |           |           |
| 312A        | DISCHARGE       |             |           |           |

ASIC Charge Number 2105255 Charge status Satisfied  
Date registered 20-Dec-2010 Time registered 14:59:00  
Charge type Both Fixed & Floating  
Date Created 13-Dec-2010

**Chargee** **ECG FUNDS MANAGEMENT LTD AS CUSTODIAN AND**  
**AGENT FOR EQUITRUST LTD AS RESPONSIBLE ENTITY**  
**FOR THE EQUITRUST PRIORITY CLASS INCOME FUND**  
147 968 741

| Lodged      | Form Type       | Processed   | No. Pages |           |
|-------------|-----------------|-------------|-----------|-----------|
| 26-Aug-2011 | 312             | 04-Oct-2011 | 2         | 027621512 |
| 312         | NOTIFICATION OF |             |           |           |
| 312A        | DISCHARGE       |             |           |           |

#### Document Details

| Received    | Form Type   | Processed   | No. Pages | Effective   |           |
|-------------|---|-------------|-----------|-------------|-----------|
| 11-Nov-2014 | FS67  | 01-Dec-2014 | 1         | 11-Nov-2014 | 027719889 |
| FS67        | Order Suspending Afs Licence                            |             |           |             |           |
| 15-Jan-2014 | 902   | 16-Jan-2014 | 3         | 27-Aug-2012 | 028749955 |
| 902         | Supplementary Document                                  |             |           |             |           |
|             | Alters 028 211 191                                      |             |           |             |           |
| 04-Apr-2013 | 902   | 27-May-2013 | 28        | 20-Apr-2012 | 028468193 |
| 902         | Supplementary Document                                  |             |           |             |           |
|             | Alters 7E4 478 241                                      |             |           |             |           |
| 05-Dec-2012 | FS67  | 07-Dec-2012 | 2         | 05-Dec-2012 | 027719067 |
| FS67        | Order Suspending Afs Licence                            |             |           |             |           |
| 31-Jan-2012 | 484   | 31-Jan-2012 | 2         | 31-Jan-2012 | 7E4245817 |
| 484E        | Change to Company Details Appointment or Cessation of A |             |           |             |           |

Company Officeholder

|             |  |             |    |             |           |
|-------------|--|-------------|----|-------------|-----------|
| 20-Dec-2011 | 484  | 20-Dec-2011 | 2  | 20-Dec-2011 | 7E4173170 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 14-Dec-2011 | FS67   | 14-Dec-2011 | 8  | 14-Dec-2011 | 026082473 |
| FS67        | ORDER SUSPENDING AFS LICENCE   |             |    |             |           |
| 22-Nov-2011 | 484  | 22-Nov-2011 | 3  | 22-Nov-2011 | 7E4107256 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 22-Nov-2011 | 484  | 22-Nov-2011 | 3  | 22-Nov-2011 | 7E4106959 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 26-Oct-2011 | 484  | 26-Oct-2011 | 2  | 26-Oct-2011 | 7E4044308 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 21-Oct-2011 | 484  | 21-Oct-2011 | 2  | 21-Oct-2011 | 7E4034358 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 21-Oct-2011 | 484  | 21-Oct-2011 | 4  | 21-Oct-2011 | 7E4034319 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 28-Jul-2011 | 484  | 28-Jul-2011 | 2  | 28-Jul-2011 | 7E3844445 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 15-Jun-2011 | 484  | 15-Jun-2011 | 2  | 15-Jun-2011 | 7E3737048 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 03-May-2011 | 519  | 03-May-2011 | 3  | 03-May-2011 | 027211980 |
| 519G        | NOTIFICATION OF APPLICATION TO WIND UP COMPANY UNDER S. 459P, 462 OR 464     |             |    |             |           |
| 27-Apr-2011 | FS02   | 27-Apr-2011 | 23 | 27-Apr-2011 | 0L0309086 |
| FS02        | COPY OF AFS LICENCE  |             |    |             |           |
| 07-Feb-2011 | FS90   | 07-Feb-2011 | 1  | 07-Feb-2011 | 7E3456767 |
| FS90A       | NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE  |             |    |             |           |
| 07-Feb-2011 | FS90   | 07-Feb-2011 | 1  | 07-Feb-2011 | 7E3456753 |
| FS90A       | NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE  |             |    |             |           |
| 20-Dec-2010 | 309  | 21-Dec-2010 | 51 | 13-Dec-2010 | 027412174 |
| 309A        | NOTIFICATION OF DETAILS OF A CHARGE  |             |    |             |           |
| 15-Dec-2010 | FS88   | 15-Dec-2010 | 3  | 15-Dec-2010 | 7E3366502 |

FS88A PDS IN-USE NOTICE - BY AFS LICENSEE

|             |  |             |    |             |           |
|-------------|--|-------------|----|-------------|-----------|
| 09-Nov-2010 | 484  | 09-Nov-2010 | 2  | 09-Nov-2010 | 7E3283613 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 09-Nov-2010 | 484  | 09-Nov-2010 | 2  | 09-Nov-2010 | 7E3283588 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 30-Sep-2010 | 388  | 08-Nov-2010 | 58 | 30-Jun-2010 | 027362052 |
| 388A        | FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY      |             |    |             | (FR 2010) |
| 24-Sep-2010 | 484  | 24-Sep-2010 | 2  | 24-Sep-2010 | 7E3191967 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 13-Sep-2010 | FS02   | 13-Sep-2010 | 23 | 13-Sep-2010 | 0L0308402 |
| FS02        | COPY OF AFS LICENCE  |             |    |             |           |
| 11-Aug-2010 | 484  | 11-Aug-2010 | 2  | 11-Aug-2010 | 7E3099509 |
| 484A1       | CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS                |             |    |             |           |
| 21-May-2010 | 484  | 21-May-2010 | 2  | 21-May-2010 | 7E2908272 |
| 484E        | CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER |             |    |             |           |
| 18-Jan-2010 | FS02   | 18-Jan-2010 | 22 | 18-Jan-2010 | 0L0502165 |
| FS02        | COPY OF AFS LICENCE  |             |    |             |           |
| 30-Sep-2009 | 388  | 28-Oct-2009 | 60 | 30-Jun-2009 | 025950974 |
| 388A        | FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY      |             |    |             | (FR 2009) |
| 21-Sep-2009 | 5120   | 22-Sep-2009 | 6  | 21-Sep-2009 | 024768053 |
| 5120        | NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME                             |             |    |             |           |
| 25-Aug-2009 | 484  | 25-Aug-2009 | 2  | 25-Aug-2009 | 7E2388579 |
| 484A1       | CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS                |             |    |             |           |
| 11-Feb-2009 | FS88   | 11-Feb-2009 | 3  | 06-Feb-2009 | 7E2032162 |
| FS88A       | PDS IN-USE NOTICE - BY AFS LICENSEE  |             |    |             |           |
| 28-Dec-2008 | FS90   | 05-Jan-2009 | 6  | 28-Dec-2008 | 024857933 |
| FS90A       | NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE  |             |    |             |           |
| 25-Nov-2008 | 5120   | 26-Nov-2008 | 6  | 14-Nov-2008 | 024668943 |
| 5120        | NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME                             |             |    |             |           |
| 25-Nov-2008 | 5122   | 26-Nov-2008 | 5  | 14-Nov-2008 | 024668944 |
| 5122        | NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME                           |             |    |             |           |
| 31-Oct-2008 | 388  | 06-Jan-2009 | 60 | 30-Jun-2008 | 025343802 |

|                      |  |                   |             |                        |
|----------------------|--|-------------------|-------------|------------------------|
| 388A                 | FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY                              |                   |             | (FR 2008)              |
| 05-Sep-2008<br>484A1 | 484<br>CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS                                 | 05-Sep-2008<br>4  | 05-Sep-2008 | 1F0208790              |
| 21-Apr-2008<br>FS55  | FS55<br>ORDER ISSUED PURSUANT TO S1020E(2)   | 21-Apr-2008<br>1  | 21-Apr-2008 | 018714168              |
| 18-Apr-2008<br>FS53A | FS53<br>NOTIFICATION OF USE OF PDS - BY AFS LICENSEE   | 11-Jun-2008<br>11 | 18-Apr-2008 | 024614380              |
| 20-Mar-2008<br>FS55  | FS55<br>ORDER ISSUED PURSUANT TO S1020E(2)   | 20-Mar-2008<br>2  | 20-Mar-2008 | 018714080              |
| 28-Sep-2007<br>388A  | 388<br>FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY                       | 23-Oct-2007<br>41 | 30-Jun-2007 | 024300137<br>(FR 2007) |
| 01-Aug-2007<br>FS53A | FS53<br>NOTIFICATION OF USE OF PDS - BY AFS LICENSEE   | 07-Sep-2007<br>11 | 31-Jul-2007 | 024030038              |
| 05-Jul-2007<br>350   | 350<br>CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE<br>Alters 023 956 177 | 09-Jul-2007<br>1  | 05-Jul-2007 | 023936368              |
| 05-Jul-2007<br>350   | 350<br>CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE<br>Alters 023 956 176 | 09-Jul-2007<br>1  | 05-Jul-2007 | 023936367              |
| 26-Jun-2007<br>311A  | 311<br>NOTIFICATION OF ASSIGNMENT OF CHARGE  | 26-Jun-2007<br>2  | 04-Jun-2007 | 023084888              |
| 15-Jun-2007<br>309A  | 309<br>NOTIFICATION OF DETAILS OF A CHARGE<br>Altered by 023 936 367                                 | 18-Jun-2007<br>38 | 13-Jun-2007 | 023956176              |
| 15-Jun-2007<br>309A  | 309<br>NOTIFICATION OF DETAILS OF A CHARGE<br>Altered by 023 936 368                                 | 18-Jun-2007<br>38 | 13-Jun-2007 | 023956177              |
| 15-Jun-2007<br>312C  | 312<br>NOTIFICATION OF RELEASE OF PROPERTY   | 18-Jun-2007<br>3  | 15-Jun-2007 | 023956178              |
| 15-Jun-2007<br>312C  | 312<br>NOTIFICATION OF RELEASE OF PROPERTY   | 18-Jun-2007<br>3  | 15-Jun-2007 | 023956179              |
| 04-Jun-2007<br>312C  | 312<br>NOTIFICATION OF RELEASE OF PROPERTY   | 08-Jun-2007<br>2  | 04-Jun-2007 | 023773941              |
| 15-Mar-2007<br>FS56  | FS56<br>REVOCATION OF STOP ORDER S1020E(5)   | 15-Mar-2007<br>1  | 15-Mar-2007 | 023083091              |
| 15-Mar-2007          | FS53   | 05-Apr-2007<br>11 | 15-Mar-2007 | 023103489              |

|  |      |             |    |             |           |
|--|------|-------------|----|-------------|-----------|
| FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE         |      |             |    |             |           |
| 01-Mar-2007  | FS53 | 15-Mar-2007 | 11 | 16-Feb-2007 | 023099191 |
| FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE         |      |             |    |             |           |
| 27-Feb-2007  | FS54 | 06-Mar-2007 | 1  | 27-Feb-2007 | 023083052 |
| FS54 INTERIM ORDER ISSUED PURSUANT TO S1020E(5)            |      |             |    |             |           |
| 23-Jan-2007  | 484  | 23-Jan-2007 | 6  | 23-Jan-2007 | 1F0001132 |
| 484 CHANGE TO COMPANY DETAILS                              |      |             |    |             |           |
| 484A1 CHANGE OFFICEHOLDER NAME OR ADDRESS                  |      |             |    |             |           |
| 484G NOTIFICATION OF SHARE ISSUE                           |      |             |    |             |           |
| 484O CHANGES TO SHARE STRUCTURE                            |      |             |    |             |           |
| 484N CHANGES TO (MEMBERS) SHARE HOLDINGS                   |      |             |    |             |           |
| 02-Nov-2006  | FS55 | 10-Nov-2006 | 1  | 02-Nov-2006 | 022523692 |
| FS55 ORDER ISSUED PURSUANT TO S1020E(2)                    |      |             |    |             |           |
| 01-Nov-2006  | 388  | 28-Nov-2006 | 47 | 30-Jun-2006 | 023394275 |
| 388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR |      |             |    |             | (FR 2006) |
| DISCLOSING ENTITY  |      |             |    |             |           |
| 16-Oct-2006  | FS54 | 19-Oct-2006 | 1  | 16-Oct-2006 | 022523542 |
| FS54 INTERIM ORDER ISSUED PURSUANT TO S1020E(5)            |      |             |    |             |           |
| 21-Jul-2006  | 484  | 21-Jul-2006 | 3  | 21-Jul-2006 | 022876207 |
| 484 CHANGE TO COMPANY DETAILS                              |      |             |    |             |           |
| 484H NOTIFICATION OF SHARE CANCELLATION - REDEEMABLE       |      |             |    |             |           |
| PREFERENCES  |      |             |    |             |           |
| 484O CHANGES TO SHARE STRUCTURE                            |      |             |    |             |           |
| 27-Jan-2006  | 350  | 27-Jan-2006 | 1  | 27-Jan-2006 | 019271258 |
| 350 CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY   |      |             |    |             |           |
| PROVISIONAL CHARGE   |      |             |    |             |           |
| Alters 022 351 727   |      |             |    |             |           |
| 24-Jan-2006  | 312  | 07-Feb-2006 | 2  | 24-Jan-2006 | 022691023 |
| 312C NOTIFICATION OF RELEASE OF PROPERTY                   |      |             |    |             |           |
| 24-Jan-2006  | 312  | 07-Feb-2006 | 2  | 24-Jan-2006 | 022691002 |
| 312C NOTIFICATION OF RELEASE OF PROPERTY                   |      |             |    |             |           |
| 23-Dec-2005  | 484  | 24-Jan-2006 | 3  | 23-Dec-2005 | 1F0077488 |
| 484 CHANGE TO COMPANY DETAILS                              |      |             |    |             |           |
| 484G NOTIFICATION OF SHARE ISSUE                           |      |             |    |             |           |
| 484O CHANGES TO SHARE STRUCTURE                            |      |             |    |             |           |
| 22-Dec-2005  | 309  | 22-Dec-2005 | 42 | 14-Dec-2005 | 022351727 |
| 309A NOTIFICATION OF DETAILS OF A CHARGE                   |      |             |    |             |           |
| Altered by 019 271 258                                     |      |             |    |             |           |
| 08-Dec-2005  | FS53 | 10-Jan-2006 | 11 | 01-Dec-2005 | 022353958 |
| FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE         |      |             |    |             |           |
| 03-Oct-2005  | 388  | 26-Oct-2005 | 25 | 30-Jun-2005 | 022285929 |
| 388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR |      |             |    |             | (FR 2005) |

## DISCLOSING ENTITY

|             |   |             |    |             |           |
|-------------|---|-------------|----|-------------|-----------|
| 03-Oct-2005 | 484   | 09-Nov-2005 | 4  | 06-Oct-2005 | 022285487 |
| 484         | CHANGE TO COMPANY DETAILS                             |             |    |             |           |
| 484G        | NOTIFICATION OF SHARE ISSUE                           |             |    |             |           |
| 484O        | CHANGES TO SHARE STRUCTURE                            |             |    |             |           |
| 484N        | CHANGES TO (MEMBERS) SHARE HOLDINGS                   |             |    |             |           |
| 07-Feb-2005 | FS53  | 09-Feb-2005 | 6  | 09-Nov-2004 | 020981780 |
| FS53A       | NOTIFICATION OF USE OF PDS - BY AFS LICENSEE          |             |    |             |           |
| 25-Oct-2004 | 484   | 25-Oct-2004 | 3  | 25-Oct-2004 | 020745645 |
| 484         | CHANGE TO COMPANY DETAILS                             |             |    |             |           |
| 484A1       | CHANGE OFFICEHOLDER NAME OR ADDRESS                   |             |    |             |           |
| 484A2       | CHANGE MEMBER NAME OR ADDRESS                         |             |    |             |           |
| 30-Sep-2004 | 388   | 26-Nov-2004 | 24 | 30-Jun-2004 | 020866482 |
| 388A        | FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR |             |    |             | (FR 2004) |
|             | DISCLOSING ENTITY                                     |             |    |             |           |
| 19-Aug-2004 | 350   | 19-Aug-2004 | 1  | 19-Aug-2004 | 020496816 |
| 350         | CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  |             |    |             |           |
|             | PROVISIONAL CHARGE                                    |             |    |             |           |
|             | Alters 020 503 332                                    |             |    |             |           |
| 19-Aug-2004 | 350   | 19-Aug-2004 | 1  | 19-Aug-2004 | 020496815 |
| 350         | CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  |             |    |             |           |
|             | PROVISIONAL CHARGE                                    |             |    |             |           |
|             | Alters 019 654 728                                    |             |    |             |           |
| 12-Aug-2004 | 312   | 12-Aug-2004 | 1  | 12-Aug-2004 | 020501228 |
| 312C        | NOTIFICATION OF RELEASE OF PROPERTY                   |             |    |             |           |
| 12-Aug-2004 | 312   | 12-Aug-2004 | 1  | 12-Aug-2004 | 020501229 |
| 312C        | NOTIFICATION OF RELEASE OF PROPERTY                   |             |    |             |           |
| 06-Aug-2004 | 350   | 06-Aug-2004 | 1  | 06-Aug-2004 | 020501044 |
| 350         | CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  |             |    |             |           |
|             | PROVISIONAL CHARGE                                    |             |    |             |           |
|             | Alters 020 496 010                                    |             |    |             |           |
| 03-Aug-2004 | 309   | 03-Aug-2004 | 26 | 02-Aug-2004 | 020503332 |
| 309A        | NOTIFICATION OF DETAILS OF A CHARGE                   |             |    |             |           |
|             | Altered by 020 496 816                                |             |    |             |           |
| 28-Jul-2004 | 309   | 28-Jul-2004 | 26 | 28-Jul-2004 | 019654728 |
| 309A        | NOTIFICATION OF DETAILS OF A CHARGE                   |             |    |             |           |
|             | Altered by 020 496 815                                |             |    |             |           |
| 27-Jul-2004 | 309   | 27-Jul-2004 | 33 | 21-Jul-2004 | 020496010 |
| 309A        | NOTIFICATION OF DETAILS OF A CHARGE                   |             |    |             |           |
|             | Altered by 020 501 044                                |             |    |             |           |
| 26-Feb-2004 | 484   | 02-Mar-2004 | 4  | 25-Feb-2004 | 020058392 |

|                                    |  |                   |  |             |                        |
|------------------------------------|--|-------------------|--|-------------|------------------------|
| 484J                               | CHANGE TO COMPANY DETAILS NOTIFICATION OF SHARE CANCELLATION<br>- COMPANY BUY-BACK                           |                   |  |             |                        |
| 06-Feb-2004<br>280                 | 280<br>NOTICE OF MEETING AND DOCUMENTS RE BUY-BACK   | 10-Feb-2004<br>2  |  | 06-Feb-2004 | 020053042              |
| 23-Jan-2004<br>484E                | 484<br>CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER                          | 06-Feb-2004<br>7  |  | 15-Jan-2004 | 020045260              |
| 15-Dec-2003<br>309A                | 309<br>NOTIFICATION OF DETAILS OF A CHARGE   | 15-Dec-2003<br>49 |  | 28-Nov-2003 | 019674836              |
| 12-Nov-2003<br>5120                | 5120<br>NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME   | 14-Nov-2003<br>1  |  | 12-Nov-2003 | 017914658              |
| 14-Oct-2003<br>FS02                | FS02<br>COPY OF AFS LICENCE  | 14-Oct-2003<br>19 |  | 14-Oct-2003 | 0L0200526              |
| 26-Sep-2003<br>388A                | 388<br>FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY                               | 13-Oct-2003<br>29 |  | 30-Jun-2003 | 019777182<br>(FR 2003) |
| 02-Apr-2003<br>FS50                | FS50<br>PDS OPT-IN NOTICE  | 08-Apr-2003<br>3  |  | 02-Apr-2003 | 018172296              |
| 23-Jan-2003<br>766C                | 766C<br>SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME<br>Alters 017 937 276                | 23-Jan-2003<br>2  |  | 23-Jan-2003 | 017914312              |
| 15-Jan-2003<br>7113                | 7113<br>NOTICE OF DECLARATION RE FUNDRAISING CHAPTER 6D  | 17-Feb-2003<br>1  |  | 15-Jan-2003 | 017914326              |
| 20-Dec-2002<br>316<br>316P<br>316G | 316<br>ANNUAL RETURN<br>CHANGE OF NAME OR ADDRESS OF OFFICEHOLDER<br>ANNUAL RETURN - UNLISTED PUBLIC COMPANY | 30-Dec-2002<br>4  |  | 18-Dec-2002 | 06138394M<br>(AR 2002) |
| 11-Dec-2002<br>309A                | 309<br>NOTIFICATION OF DETAILS OF A CHARGE   | 11-Dec-2002<br>36 |  | 05-Dec-2002 | 017885826              |
| 21-Nov-2002<br>211                 | 211<br>RETURN SHOWING DIVISION OR CONVERSION OF SHARES INTO CLASSES  | 11-Dec-2002<br>1  |  | 09-May-1996 | 018618125              |
| 30-Sep-2002<br>388A                | 388<br>FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY                               | 06-Jan-2003<br>30 |  | 30-Jun-2002 | 018250503<br>(FR 2002) |
| 11-Feb-2002<br>766C                | 766C<br>SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME<br>Alters 017 937 276                | 11-Feb-2002<br>1  |  | 11-Feb-2002 | 017944744              |

|             |   |             |    |             |           |
|-------------|---|-------------|----|-------------|-----------|
| 11-Feb-2002 | 754H  | 11-Feb-2002 | 42 | 11-Feb-2002 | 017944743 |
| 754H        | REPLACEMENT SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME |             |    |             |           |
|             | Alters 017 937 276  |             |    |             |           |
|             |   |             |    |             |           |
| 05-Feb-2002 | 7109  | 05-Feb-2002 | 1  | 13-Feb-2002 | 016702403 |
| 7109        | NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727        |             |    |             |           |
|             | Alters 017 937 276  |             |    |             |           |
|             |   |             |    |             |           |
| 29-Jan-2002 | 764H  | 29-Jan-2002 | 41 | 06-Feb-2002 | 017937276 |
| 764H        | SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME             |             |    |             |           |
|             | Altered by 016 702 403  |             |    |             |           |
|             | Altered by 017 944 743  |             |    |             |           |
|             | Altered by 017 944 744  |             |    |             |           |
|             | Altered by 017 944 744  |             |    |             |           |
|             | Altered by 017 914 312  |             |    |             |           |
|             | Altered by 017 914 312  |             |    |             |           |
|             |   |             |    |             |           |
| 25-Jan-2002 | 205   | 25-Jan-2002 | 4  | 24-Jan-2002 | 015946604 |
| 205A        | NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME                |             |    |             |           |
|             |   |             |    |             |           |
| 23-Jan-2002 | 316   | 01-Feb-2002 | 4  | 15-Jan-2002 | 06138394L |
| 316G        | ANNUAL RETURN - UNLISTED PUBLIC COMPANY                         |             |    |             | (AR 2001) |
|             |   |             |    |             |           |
| 21-Dec-2001 | 766C  | 24-Dec-2001 | 1  | 21-Dec-2001 | 017933781 |
| 766C        | SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME |             |    |             |           |
|             | Alters 016 700 170  |             |    |             |           |
|             |   |             |    |             |           |
| 14-Dec-2001 | 7113  | 18-Dec-2001 | 1  | 14-Dec-2001 | 016702330 |
| 7113        | NOTICE OF DECLARATION RE FUNDRAISING CHAPTER 6D                 |             |    |             |           |

**THERE ARE FURTHER DOCUMENTS LODGED BY THIS COMPANY.  
SELECT THE 'ORDER COMPANY DOCUMENTS' OPTION FROM THE  
ORGANISATIONAL SEARCH SUMMARY SCREEN TO OBTAIN A  
COMPLETE LIST OF COMPANY DOCUMENTS.**

#### Annual Returns

| Year | Return Due Date | Extended Due Date | AGM Due Date | Extended AGM Due Date | AGM Held Date | Outstanding |
|------|-----------------|-------------------|--------------|-----------------------|---------------|-------------|
| 1994 | Unknown         |                   |              |                       | 31-Dec-1994   | N           |
| 1995 | 31-Dec-1995     |                   | 30-Nov-1995  |                       | 15-Dec-1995   | N           |
| 1996 | 31-Dec-1996     |                   | 30-Nov-1996  |                       | 31-Dec-1996   | N           |
| 1997 | 31-Dec-1997     |                   | 30-Nov-1997  |                       | 25-Mar-1998   | N           |
| 1998 | 31-Jan-1999     |                   |              |                       |               | N           |
| 1999 | 31-Jan-2000     |                   |              |                       |               | N           |
| 2000 | 31-Jan-2001     |                   |              |                       |               | N           |
| 2001 | 31-Jan-2002     |                   |              |                       |               | N           |
| 2002 | 31-Jan-2003     |                   |              |                       |               | N           |

### Financial Reports

| Balance Date | Report Due Date | AGM Due Date | Extended AGM Due Date | AGM Held Date | Outstanding |           |
|--------------|-----------------|--------------|-----------------------|---------------|-------------|-----------|
| 30-Jun-1999  | 31-Oct-1999     | Unknown      | Unknown               | Unknown       | N           | 015497012 |
| 30-Jun-2000  | 31-Oct-2000     | Unknown      | Unknown               | Unknown       | N           | 016703322 |
| 30-Jun-2001  | 31-Oct-2001     | Unknown      | Unknown               | Unknown       | N           | 017677206 |
| 30-Jun-2002  | 31-Oct-2002     | Unknown      | Unknown               | Unknown       | N           | 018250503 |
| 30-Jun-2003  | 31-Oct-2003     | Unknown      | Unknown               | Unknown       | N           | 019777182 |
| 30-Jun-2004  | 31-Oct-2004     | Unknown      | Unknown               | Unknown       | N           | 020866482 |
| 30-Jun-2005  | 31-Oct-2005     | Unknown      | Unknown               | Unknown       | N           | 022285929 |
| 30-Jun-2006  | 30-Nov-2006     | Unknown      | Unknown               | Unknown       | N           | 023394275 |
| 30-Jun-2007  | 31-Oct-2007     | Unknown      | Unknown               | Unknown       | N           | 024300137 |
| 30-Jun-2008  | 31-Oct-2008     | Unknown      | Unknown               | Unknown       | N           | 025343802 |
| 30-Jun-2009  | 31-Oct-2009     | Unknown      | Unknown               | Unknown       | N           | 025950974 |
| 30-Jun-2010  | 31-Oct-2010     | Unknown      | Unknown               | Unknown       | N           | 027362052 |

Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address PO BOX 8111, GOLD COAST MC, QLD, 9726  
Start Date 28-Jun-2003

\*\*\* End of Extract \*\*\*